



For Office Use Only

Government Claims Program
Office of Risk and Insurance Management
Department of General Services
P.O. Box 989052, MS 414
West Sacramento, CA 95798-9052

1-800-955-0045 • www.dgs.ca.gov/orim/Programs/GovernmentClaims.aspx

Clear Form

Print Form

Is your claim complete?

- ☒ Include a check or money order for \$25 payable to the State of California.
- ☒ Complete all sections relating to this claim and sign the form. Please print or type all information.
- ☒ Attach copies of any documentation that supports your claim. Please do not submit originals.

Claimant Information Use name of business or entity if claimant is not an individual

1	Murray	Bruce	T	2	Tel: 619-501-8556		
	Last name	First Name	MI	3	Email: murray@sagelaw.us		
4	1931 E Street		San Diego		CA	92102	
	Mailing Address		City		State	Zip	
5	Inmate or patient number, if applicable:						
6	Is the claimant under 18?			If Yes, please give date of birth:			
7							

If you are an insurance company claiming subrogation, please provide your insured's name in section 7.

8	
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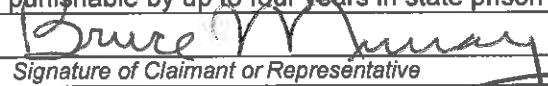
If your claim relates to another claim or claimant, please provide the claim number or claimant's name in section 8.

Attorney or Representative Information

9	(same as above)	10	Tel:		
	Last name	First Name	MI	11	Email:
12					
	Mailing Address	City	State	Zip	
13	Relationship to claimant: in propria persona				

Claim Information Please add attachments as necessary

14	Is your claim for a stale-dated warrant (uncashed check)? <input type="radio"/> Yes <input checked="" type="radio"/> No If No, skip to Step 15.				
	State agency that issued the warrant:				
	Dollar amount of warrant:		Date of issue:		
	Warrant number:		MM/DD/YYYY		
15	Date of Incident: January 29, 2018				
	Was the incident more than six months ago? <input type="radio"/> Yes <input checked="" type="radio"/> No				
	If YES, did you attach a separate sheet with an explanation for the late filing? <input type="radio"/> Yes <input checked="" type="radio"/> No				
16	State agencies or employees against whom this claim is filed:				
	The Medical Board of California Kerrie Webb, Staff Counsel, Medical Board of California Kimberly Kirchmeyer, Executive Director, Medical Board of California				
17	Dollar amount of claim:				
	If the amount is more than \$10,000, indicate the type of civil case:		<input type="radio"/> Limited civil case (\$25,000 or less) <input checked="" type="radio"/> Non-limited civil case (over \$25,000)		
	Explain how you calculated the amount:				

18	Location of the incident: Medical Board of California 2005 Evergreen Street, Suite 1200 Sacramento, CA 95815		
19	Describe the specific damage or injury: (Please see attached presentation of claims.)		
20	Explain the circumstances that led to the damage or injury: (Please see attached presentation of claims.)		
21	Explain why you believe the state is responsible for the damage or injury: (Please see attached presentation of claims.)		
22	Does the claim involve a state vehicle?		<input type="radio"/> Yes <input checked="" type="radio"/> No
	If YES, provide the vehicle license number, if known:		
Auto Insurance Information			
23			
	Name of Insurance Carrier		
	Mailing Address	City	State Zip
	Policy Number:	Tel:	
	Are you the registered owner of the vehicle?		<input type="radio"/> Yes <input type="radio"/> No
	If NO, state name of owner:		
	Has a claim been filed with your insurance carrier, or will it be filed?		<input type="radio"/> Yes <input type="radio"/> No
	Have you received any payment for this damage or injury?		<input type="radio"/> Yes <input type="radio"/> No
	If yes, what amount did you receive?		
	Amount of deductible, if any:		
	Claimant's Drivers License Number:	Vehicle License Number:	
	Make of Vehicle:	Model:	Year:
	Vehicle ID Number:		
Notice and Signature			
24	I declare under penalty of perjury under the laws of the State of California that all the information I have provided is true and correct to the best of my information and belief. I further understand that if I have provided information that is false, intentionally incomplete, or misleading I may be charged with a felony punishable by up to four years in state prison and/or a fine of up to \$10,000 (Penal Code section 72).		
	 Signature of Claimant or Representative		Bruce Murray Date: May 30, 2018
25	Mail this form and all attachments with the \$25 filing fee or the "Filing Fee Waiver Request" to: Government Claims Program, P.O. Box 989052, MS 414, West Sacramento, CA 95798-9052. Forms can also be delivered to the Office of Risk and Insurance Management, 707 3rd street, 1st Floor ORIM, West Sacramento, CA 95605.		

Bruce Thomas Murray (SBN 306504)
1931 E Street
San Diego, CA 92102
murray@sagelaw.us
(619) 501-8556

Claimant, *in propria persona*

**PRESENTATION OF CLAIMS, CALIFORNIA DEPARTMENT OF GENERAL
SERVICES, GOVERNMENT CLAIMS PROGRAM**

BRUCE THOMAS MURRAY,

Claimant

v.

MEDICAL BOARD OF CALIFORNIA;

KIMBERLY KIRCHMEYER, in her
capacity as executive director, Medical Board
of California;

KERRIE D. WEBB, in her capacity as staff
counsel, Medical Board of California; and
DOES 1-25, inclusive,

Respondents

Case No.:

COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND
DECLARATORY RELIEF

**1. FAILURE TO PROVIDE PERSONAL
INFORMATION,** in violation of Cal. Civ.
Code § 1798.34

**2. DENIAL OF PERSONAL
INFORMATION** to an authorized
representative and beneficiary, in violation of
Cal. Civ. Code § 1798.24(c)

**3. FAILURE TO ASSIST IN THE
IDENTIFICATION OF RECORDS,** in
violation of Cal. Gov. Code § 6253.1

**4. FAILURE TO PROVIDE PUBLIC
INFORMATION** in violation of Cal. Gov.
Code § 6253 et seq.

**5. ERRONEOUS INTERPRETATION
AND APPLICATION** of Cal. Evid. Code §
1040 and Cal. Gov. Code § 6255

- 1) 6. **FAILURE TO PROVIDE ACCESS TO**
2) **‘THE PEOPLE’S BUSINESS’** in violation of
3) the California Constitution, Article I, section
4) 3(b)
5) 7. **VIOLATION OF PUBLIC POLICY**, as
6) set out in the Information Practices Act, the
7) Business & Professions Code, the California
8) Evidence Code, the California Constitution,
9) and the California Public Records Act.
10) ■ Demand for monetary judgment, injunctive
11) relief, declaratory relief, costs and attorney’s
12) fees.
13) ■ Unlimited civil case

14
15 **I. SUMMARY OF CLAIMS**

16 1. Claimant Bruce Thomas Murray hereby presents his claims against the Medical Board of
17 California and its agents, Kimberly Kirchmeyer and Kerrie D. Webb, as well as any unknown
18 parties (“Does”), in accordance with Cal. Gov. Code § 910 et seq.

19 2. Bruce T. Murray alleges that the Respondents wrongfully denied him personal
20 information regarding his deceased mother, in violation of Cal. Civ. Codes §§ 1798.24-34, et
21 seq. Furthermore, Respondents purposefully frustrated Claimant’s attempts to identify records
22 and information responsive to his request, in violation of Cal. Gov. Code § 6253.1.

23 3. Pursuant to Cal. Civ. Code § 1798.46, Claimant seeks an injunction ordering the Medical
24 Board to release all information in its possession regarding Audrey B. Murray’s medical
25 condition, treatment and death. (Additional elements of the requested injunction are described in
26 particularity below.)

27 4. In addition to injunctive relief, Claimant seeks declaratory relief, damages, costs and
28 attorney’s fees, pursuant to Cal. Civ. Code § 1798.45 et seq., described in particularity below.

1 5. If and to the extent that any of the records sought by Claimant are covered under the
2 California Public Records Act (Cal. Gov. Code § 6250 et seq.), Claimant seeks an injunction
3 commanding the release of such information under Cal. Gov. Code § 6258, as well as declaratory
4 relief. Additionally, Claimant seeks costs and attorney's fees under Cal. Gov. Code § 6259.

5 6 **II. THE PARTIES, RIGHTS AND DUTIES**

7 6. Claimant, Bruce Thomas Murray is a surviving son and beneficiary of Audrey Bevan
8 Murray (Cal. Prob. Code § 24). As such, he is an authorized representative entitled to receive her
9 personal and medical information under Cal. Civ. Code § 1798.24 and Cal. Civ. Code § 56.11.

10 7. Respondent, the Medical Board of California, is a "board" under Cal. Bus. & Prof. Code
11 § 2002; a "public entity" under Cal. Gov. Code § 811.2; an agency of the "state" under Cal. Gov.
12 Code § 940.6; an "agency" under Cal. Civ. Code § 1798.3; and a "state agency" under Cal. Gov.
13 Code § 6252(f). As such, the Medical Board is subject to the requirements of Cal. Civ. Code §§
14 1798.24-34 (disclosure and inspection of personal information in records) and Cal. Gov. Code §
15 6253.1 (Agency to assist in inspection of public record).

16 8. Respondent Kimberly Kirchmeyer, as an agent of the Medical Board of California, is a
17 "public employee" under Cal. Gov. Code § 811.4, and an officer of the state under Cal. Gov.
18 Code § 900.6. In her capacity as executive director of the Medical Board of California,
19 Kirchmeyer is ultimately responsible for the operations of the MBC, including the MBC's
20 compliance with its duties under the law.

21 9. Respondent Kerrie D. Webb, as an agent of the Medical Board of California, is a "public
22 employee" under Cal. Gov. Code § 811.4, and an officer of the state under Cal. Gov. Code §
23 900.6. In her capacity as senior staff counsel of the Medical Board of California, Webb has a
24 duty to comply with the California Constitution, the Business & Professions Code, the California
25 Information Practices Act, the California Public Records Act, and all other applicable state laws.

26 **III. STANDARD OF REVIEW**

27 10. In suits under the California Information Practices Act, "the court shall determine the
28 matter de novo, and may examine the contents of any agency records in camera to determine
whether the records or any portion thereof may be withheld as being exempt from the

individual's right of access and the burden is on the agency to sustain its action." Cal. Civ. Code § 1798.46(a).

11. For any issues decided under the California Public Records Act, "the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow." Cal. Gov. Code § 6259.

IV. FACTS

12. At approximately 8 a.m. June 4, 2013, Dr. James C. Matchison (med. license no. A00097926) performed a cardiac catheterization procedure on Claimant's mother.

13. Due to complications during the procedure, the procedure was aborted.

14. At approximately 10 a.m. June 4, 2013, Audrey Murray was admitted to the Torrance Memorial Medical Center Progressive Care Unit (PCU) for post-procedure recovery.

15. At approximately 11:30 a.m. June 5, 2013, Mrs. Murray was discharged from Torrance Memorial and into the care of her eldest son, William E. Murray, who brought her home.

16. After she arrived home, Mrs. Murray began experiencing severe pain in her chest and shoulder, and difficulty in breathing. As her pain and distress increased, William called 911.

17. At approximately 3:30 p.m., Mrs. Murray was transported back to Torrance Memorial for emergency treatment.

18. At approximately 4 p.m. June 5, 2013, Audrey B. Murray, died in the emergency room at Torrance Memorial Medical Center.

19. On June 11, 2013, Bruce Murray spoke with Dr. Matchison over the phone, seeking an explanation for and the cause of his mother's death. The doctor provided none.

20. On May 15, 2014, Bruce Murray filed a complaint with the Medical Board, seeking an explanation for and cause of his mother's death. (See Exhibit 1.)

21. In a letter to Claimant dated May 19, 2014, the Medical Board confirmed receipt of Claimant's complaint and assigned it Control Number 800 2014 005263.

22. In a letter to Claimant dated May 23, 2014, Linda Serrano, Medical Board Associate Enforcement Analyst, requested authorization for release of medical records and a copy of

1 Audrey Murray's death certificate. The letter specified that the authorization must be signed by
2 the "next of kin as shown on death certificate." (Exh. 2.)

3 23. Peter B. Murray, Claimant's brother, is listed as the "informant" on Audrey Murray's
4 death certificate. (Exh. 3.) Peter Murray was the successor trustee of the Audrey B. Murray
5 Trust, now terminated. (Exh. 23.) Audrey Murray's testamentary papers did not specifically
6 name a "personal representative" according to Cal. Prob. Code §§ 42, 58.

7 24. In a letter to Linda Serrano dated September 4, 2014, Bruce Murray granted the Medical
8 Board of California full permission and access to all of his mother's medical records, as
9 necessary to conduct the investigation into her death. Claimant cited his authority to do so as
10 "beneficiary or personal representative of the deceased patient," under Cal. Bus. & Prof. Code §
2225. (Exh. 4.)

11 25. On September 9, 2014, Peter Murray also sent Serrano an authorization for access to
12 Audrey Murray's medical records, along with a copy of Audrey Murray's death certificate. Peter
13 Murray also authorized the Medical Board to communicate directly with Bruce Murray regarding
14 the matter. (Exh. 5.)

15 26. September 2-9, 2014, Claimant exchanged emails with Cassandra Hockenson, JD, Public
16 Affairs Manager of the Medical Board of California. Claimant requested assistance in locating
17 the rules of procedure that the Medical Board of California follows when conducting
18 investigations of licensees. (Exh. 6.)

19 27. In a September 9, 2014 email to Claimant, Hockenson wrote, "We do not have rules for
20 the process and procedures of an investigation. Our Investigative Unit has Enforcement
21 Operations Manuals that lay out the procedures of investigating a matter. I'm not sure they are
22 public though, and if they are they will likely need redacting." (Exh. 6.)

23 28. On October 10, 2014, Claimant sent an email to Linda Serrano, requesting that the
24 Medical Board provide Claimant with documents that Dr. Matchison would have filed pursuant
25 to Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R. § 1356.4
(Outpatient Surgery-Reporting of Death). (Exh. 7.) Serrano did not reply to this email.

26 29. On December 15, 2014, Claimant sent another email to Linda Serrano, reiterating the
27 request of his Oct. 10 email. (Exh. 8.) Serrano did not reply to this email.

30. At various times during 2014 and 2015, Claimant called Serrano and left voice messages requesting the aforementioned documents. Serrano did not return these phone calls.

31. In a letter to Bruce Murray dated January 15, 2015, Serrano confirmed receipt of all records and documentation required for a review of his complaint.

32. On January 21, 2015, Claimant sent Serrano another email reiterating the requests of his Oct. 10 and Dec. 15 emails. (Exh. 9.) This time, finally, Serrano replied to the email, stating only, “We do not provide copies of those reports.” (Exh. 10.)

33. On February 10, 2015, Claimant sent Respondent Kerrie Webb a letter requesting copies of any filings made by Dr. Matchison under Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R. § 1356.4 (Outpatient Surgery-Reporting of Death). Claimant made this request pursuant to Cal. Gov. Code § 6253.1 (Agency to assist in inspection of public record). (Exh. 11.) Claimant also noted, “As the son and beneficiary of my mother, I am entitled and authorized to receive any otherwise privileged and confidential information.” *Id.*

34. In a letter dated February 20, 2015, Respondent Webb denied Claimant’s request for these documents on three bases: (1) “Records of complaints to, and investigations conducted by, state licensing agencies are not subject to disclosure pursuant to government Code section 6254(f);” because, she asserted (2) “[r]eports for the death of a patient **are treated** as complaints to the Board, and will not be disclosed.” [Emphasis added.] And (3) “[i]n addition, records of complaints and investigations of state licensing agencies are privileged under Evidence Code section 1040.” (Exh. 12.)

35. In her Feb. 20 letter, Respondent Webb did not cite any authority for her interpretations of Cal. Gov. Code § 6254, Cal. Evid. Code § 1040, Cal. Bus. & Prof. Code § 2240, and 16 C.C.R. § 1356.4. Specifically, (1) she failed to provide any authority for “treating” reports for the death of patient as “complaints to the Board”; (2) she did not cite any authority for exempting these documents from the disclosure requirements of Cal. Gov. Code § 6253.1; and (3) she did not cite any authority for assigning an absolute privilege to the information sought by Claimant (rather than the qualified privilege of § 1040). (*Id.*)

36. Also in her Feb. 20 letter, Respondent Webb failed to “provide suggestions for overcoming any practical basis for denying access to the records or information sought,” as is required by Cal. Gov. Code § 6253.1(a)(3). (*Id.*)

1 37. In a letter dated April 14, 2015, the Medical Board provided Claimant with a report of its
2 conclusion of case number 800 2014 005263. The report contains six-sentences and 108 words.
3 The report states, “It was the opinion of our consultant that the treatment rendered did not
4 constitute a violation of the law as it relates to the practice of medicine. ... Thank you for
5 contacting the Medical Board of California.” (Exh. 13.)

6 38. The letter does not state the bases for the Medical Board’s conclusion, nor does it include
7 any facts or analysis of the facts involved in the investigation. *Id.* Most critically, the report does
8 not provide any explanation for or the cause of Audrey Murray’s death – the central issue of
9 Claimant’s initial complaint to the board. (Exh. 1.) Therefore, the final report is entirely useless
10 to Claimant.

11 39. On October 5, 2015, Bruce Murray filed a petition for writ of mandate in the Los
12 Angeles Superior Court (No. BS158575), requesting that the court compel the Medical Board to
13 release documents filed with the Medical Board in accordance with Cal. Bus. & Prof. Code §
14 2240 (Report for Death of Patient) and 16 CCR 1356.4 (Outpatient Surgery--Reporting of Death)
15 regarding the death of Audrey Bevan Murray. Petitioner also asked the court to compel the
16 Medical Board to release any information it had obtained regarding the cause of Audrey
17 Murray’s death.

18 40. On October 7, 2015, Petitioner served Audrey Murray’s two other beneficiaries, William
19 E. Murray and Peter B. Murray, copies of the petition; and Petitioner lodged proof of service
20 with the court. William and Peter did not opt to join the action.

21 41. On November 20, 2015, Respondents demurred to the petition.

22 42. On January 2, 2016, Petitioner filed an amended petition. (Exh. 14.) The amended
23 petition contained five causes of action: (1) Abuse of discretion in denying Claimant’s requests
24 for information under Cal. Gov. Code § 6254; (2) Abuse of discretion in the interpretation and
25 application of Cal. Evid. Code § 1040; (3) Violation of Cal. Gov. Code § 6250, et seq. (Failure to
26 Properly Respond to a Request under the California Public Records Act); (4) Violation of the
27 California Constitution, Article I, section 3(b) (Failure to Provide Access to ‘The People’s
28 business’); and (5) Violation of Public Policy with Respect to the California Constitution, the
California Public Records Act, the Medical Practice Act and the California Evidence Code.

43. The Amended petition requested (1) all information, reports and statements acquired by the Medical Board regarding Audrey B. Murray's medical condition, treatment and death; (2) all documents contained in MBC file number 800 2014 005263 that contain information regarding the cause and circumstances Audrey B. Murray's death; (3) all statements made to the Medical Board by Dr. James Matchison and any other third parties regarding Audrey B. Murray's medical condition, treatment and death; and (4) all documents filed with the Medical Board pursuant to Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4 – **or the equivalent underlying information** – regarding the death of Audrey Bevan Murray. *Id.*

44. On February 8, 2016, Respondents demurred to the amended petition.

45. On May 3, 2016, Judge Mary H. Strobel overruled the demurrer in its entirety.

46. On November 17, 2016, Petitioner filed his Motion for Judgment on the Writ. (Exh. 15.)

47. On January 3, 2017, Petitioner filed his Reply to Respondents' Opposition to Motion for Judgment on Writ. (Exh. 16.)

48. On January 17, 2017, Judge Strobel denied the writ – primarily on the bases of failure to exhaust administrative remedies and mootness. (Exh. 17.) Thus, the case was not decided on the merits. The case was moot, the court determined, because the documents that Petitioner had initially requested (reports filed under Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4) did not exist. *Id.* at 17. Nonetheless, the court noted an inconsistency with the Medical Board's denial of Claimant's request: "Webb denied the CPRA request based on an exemption, as if the report existed. If the report did not exist, there was no reason for Webb to claim that the report was exempt. As stated by Petitioner, perhaps 'mistakes were made.'" (Exh. 16:4; 17:11.)

49. Between January 31 and July 24, 2017, Peter Murray, as trustee of the Audrey B. Murray Trust, made the final substantial distributions from ABM Trust to the beneficiaries (in amounts ranging from \$31,333.33 to \$30,536.15). (Exh. 23.)

50. In a letter to Kerrie Webb dated April 27, 2017, Bruce Murray requested that she provide him "with all information in the Medical Board's possession regarding Audrey B. Murray's medical condition, treatment and the circumstances and cause(s) of her death." Claimant requested this information "in accordance with the Information Practices Act (Cal. Civ. Code § 1798.34 et seq.) and all other applicable laws of this state." (Exh. 18.)

1 51. In a letter dated May 26, 2017, Kerrie Webb denied Claimant's request. (Exh. 19.) Webb
2 justified her denial by stating: "The Information Practices Act prohibits an agency from
3 disclosing any personal information in a manner that would link the information disclosed to the
4 individual to whom it pertains unless the disclosure falls within a particular category set forth in
5 Civil Code section 1798.24. As relevant here, Civil Code section 1798.24, subdivision (g),
6 provides that information may be produced pursuant to the California Public Records Act. The
7 records sought in Category 1 are exempt from disclosure under the Public Records Act." *Id.*

8 52. Along with her May 26 letter, Webb purported to "produce" documents responsive to
9 Claimant's request. However, this small cache of documents consisted of writings that Claimant
10 himself had previously provided to Respondents, as well as letters and emails that Respondents
11 had previously sent to Claimant. *Id.*

12 53. In a letter to Kerrie Webb dated July 10, 2017, Claimant objected to her illusory
13 "production" of documents already in Claimant's custody and control. (Exh. 20.)

14 54. Also in his July 10 letter to Webb, Claimant objected to her bases for refusing to release
15 any information responsive to his request: "You skip CIPA and go directly to CPRA by invoking
16 Cal. Civ. Code § 1798.24(g). However, this provision of CIPA simply allows personal
17 information otherwise protected by CIPA to be released via CPRA. But you use § 1798.24(g) as
18 a shortcut to the CPRA exemptions – and then deny my request on that basis. This is an invalid
19 analysis. Section 1798.24(g) is not a trapdoor getaway clause out of CIPA. If the clause could be
20 used in this way, this entire section of the CIPA would effectively cease to exist and simply fold
21 into CPRA. One law cannot be used to nullify another in this manner." *Id.*

22 55. In a letter from Kerrie Webb to Bruce Murray dated August 4, 2017, Webb justified her
23 asserted exemption under the Public Records Act by stating, "First, once it was determined that
24 1) you were seeking information relating to another person; 2) you were not the trustee of
25 Audrey B. Murray's estate; and 3) the letter signed by trustee Peter B. Murray was not sufficient
26 to permit the Board to release Ms. Murray's medical records to you, it was appropriate to
27 evaluate the request as a Public Records Act request, and respond accordingly. Absent additional
28 documentation, the Board is unable to release Ms. Murray's medical records to you." (Exh. 21.)

1 56. On August 30, 2017, the Audrey B. Murray Trust account went down to zero – thus
2 triggering the operation of Cal. Prob. Code § 15407 (Termination of trust; Trustee’s powers on
3 termination), i.e., “A trust terminates when ... (2) the trust purpose is fulfilled.” (Exh. 23.)

4 57. On September 8, 2017, R. Thomas Peterson, attorney for the trustee, reported to the
5 beneficiaries that “the trust has been dissolved.” He also reported a notice of credit from the IRS
6 for the tax account of Audrey B. Murray in the amount of \$1,248. Any pending remaining trust
7 business falls under Cal. Prob. Code § 15407(b) – “On termination of the trust, the trustee
8 continues to have the powers reasonably necessary under the circumstances to wind up the
9 affairs of the trust.”

10 58. Along with a letter dated January 8, 2018, Bruce Murray sent Kerrie Webb a copy of the
11 August, 2017 bank statement for the Audrey B. Murray Trust, showing the bank account going
12 down to zero. (Exh. 23.) “Thus, the role of trustee ... is a nullity, and the issue of trustee
13 authorization is moot,” Murray wrote in the letter. (Exh. 22.) “Notwithstanding ... the status of
14 Audrey B. Murray’s testamentary trust is irrelevant to my request for information from the
15 Medical Board. There was never any need for the trustee to authorize the release of information,
16 as you assert. In this context, the law makes no distinction between beneficiaries, trustees,
17 executors and personal representatives. This is true across the California Civil Code, the
18 Confidentiality of Medical Information Act, the Business & Professions Code, the Public Health
19 & Safety Code, the Information Practices Act, the Probate Code, the Code of Civil Procedure
20 and the common law.” *Id.* Thus, as his mother’s beneficiary, Claimant is “the authorized
21 representative of the individual to whom the information pertains” (Cal. Civ. Code §
22 1798.24(c)); and further, he is entitled to receive his mother’s medical information under Cal.
23 Civ. Code § 56.11(c) and Cal. Evid. Code § 993 (Physician-Patient Privilege).

24 59. In a letter from Kerrie Webb to Bruce Murray dated January 29, 2018 (Exh. 24), Webb
25 denied Claimant’s well-documented statutory right to receive the information he seeking; she
26 denied the sufficiency of Peter Murray’s prior authorization (Exh. 5); and she ignored the
27 information Claimant provided regarding the termination of trust. (Exh. 23.) Instead, Webb
28 wrote, “If you provide a proper written authorization from Peter Murray, the Board will consider
releasing Ms. Murray’s medical records to you. Alternatively, as the Board has previously
advised, you are free, with the proper release, to obtain Ms. Murray’s medical records directly

1 from the facilities and medical providers who provided care and treatment to Ms. Murray as the
2 creators and custodians of those records,” Webb stated. (Exh. 24.) Thus, even with a legally
3 unnecessary “authorization” from Peter Murray, Webb suggests that the only information she
4 would release is information that Claimant himself has already provided to the Medical Board
5 and is already in Claimant’s custody and control. Therefore, Webb’s pledge to “consider
6 releasing Ms. Murray’s medical records” is circular and illusory.

7 60. In a letter to Kerrie Webb dated February 9, 2018, Claimant stated, “This is your third
8 denial of my requests – beginning with my initial letter April 27, 2017; my second letter July 10,
9 2017; and finally my Jan. 29, 2018 letter. In each response, you wrongfully denied my requests. I
10 think it is fair to say that at this point, administrative remedies have been exhausted; and this
11 matter is ripe for judicial review.” (Exh. 25.)

12 61. Claimant received no response to his Feb. 9 letter.

13 62. The Medical Board’s consistent and longstanding refusal to provide Claimant with the
14 information to which he is legally entitled leaves Claimant aggrieved and exhausted of any
15 administrative remedy. Claimant has no plain, speedy and adequate recourse under the law other
16 than to seek relief from the court.

17 63. In advance of filing a complaint in the Superior Court, Claimant presents his claims here
18 to the Department of General Services, in accordance with Cal. Gov. Code § 905.2 et seq.

19 64. On May 30, 2018, Claimant shared a copy of this presentation of claims and all
20 supporting exhibits with Audrey Murray’s two other sons and beneficiaries, William Murray and
21 Peter Murray, via Dropbox. There are no other beneficiaries.

22 **FIRST CAUSE OF ACTION:**

23 **FAILURE TO PROVIDE PERSONAL INFORMATION, IN VIOLATION OF**
24 **CAL. CIV. CODE § 1798.34**

25 **As against all Respondents**

26 65. Claimant incorporates the allegations of the preceding paragraphs as though fully set
27 forth herein.
28

1 66. The California Information Practices Act states: “[E]ach agency shall permit any
2 individual upon request and proper identification to inspect all the personal information in any
3 record containing personal information.” Cal. Civ. Code § 1798.34(a).

4 67. In his April 27, 2017 letter to Kerrie Webb, Claimant made a valid request under the
5 Information Practices Act, asking that the Medical Board provide him “with all information in
6 the Medical Board’s possession regarding Audrey B. Murray’s medical condition, treatment and
7 the circumstances and cause(s) of her death.” (Exh. 18.)

8 68. However, instead of disclosing the information or providing a proper analysis under the
9 Information Practices Act, Webb responded by improperly invoking to the California Public
10 Records Act and erroneously concluding, “The records sought [by Claimant] are exempt from
11 disclosure under the Public Records Act.” (Exh. 19.) Webb’s “analysis” is arbitrary, capricious
12 and entirely lacking any legal or factual support. As Claimant stated in his July 10, 2017
13 response to Webb, “You skip CIPA and go directly to CPRA by invoking Cal. Civ. Code §
14 1798.24(g). However, this provision of CIPA simply allows personal information otherwise
15 protected by CIPA to be released via CPRA. But you use § 1798.24(g) as a shortcut to the CPRA
16 exemptions – and then deny my request on that basis. This is an invalid analysis. Section
17 1798.24(g) is not a trapdoor getaway clause out of CIPA. If the clause could be used in this way,
18 this entire section of the CIPA would effectively cease to exist and simply fold into CPRA. One
19 law cannot be used to nullify another in this manner.” (Exh. 20.)

20 69. Respondents had a duty to maintain accurate information regarding Audrey B. Murray
21 and the investigation of her death (Cal. Civ. Code § 1798.18); and the Medical Board also had a
22 duty to share that information with her authorized representative upon request. Cal. Civ. Code §§
23 1798.24-34. But Respondents breached that duty by wrongfully denying Claimant’s beneficial
24 status and wrongfully denying his request for his mother’s personal information.

25 70. The Medical Board’s arbitrary and erroneous interpretation and application of the law
26 call for a declaratory judgment that accurately states the rights and duties of the parties with
27 respect to the Information Practices Act. Claimant then requests injunctive relief in order to
28 compel the release of the information that he is seeking, pursuant to Cal. Civ. Code § 1798.47.

71. As a direct and proximate result of Respondents’ wrongful actions, Claimant has had to
dedicate substantial billable hours in order vindicate his rights. In accordance with Cal. Civ.

Code § 1798.48(b), Claimant is entitled to recover the costs of this action, together with reasonable attorney's fees as determined by the court.

72. As a further direct and proximate result of Respondents' conduct, Claimant has suffered general damages and non-economic damages in the form mental and emotional pain. It has been five years since Claimant's mother died, and precisely what triggered her death following surgery is still a mystery. Respondents have insight into the circumstances of Audrey Murray's death, but they wrongfully refuse to share it with Claimant. Claimant is deeply troubled by this state of affairs. In accordance with Cal. Civ. Code § 1798.48(a), Claimant is entitled to recover damages for his mental suffering. The amount of damages stemming from Respondents' conduct is not fully ascertained but within the jurisdiction of the court and subject to proof at the time of trial.

SECOND CAUSE OF ACTION:

**DENIAL OF PERSONAL INFORMATION TO AN AUTHORIZED REPRESENTATIVE
AND BENEFICIARY, IN VIOLATION OF CAL. CIV. CODE § 1798.24**

As against all Respondents

73. Claimant incorporates the allegations of the preceding paragraphs as though fully set forth herein.

74. The Information Practices Act states: "An agency shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains **unless** the information is disclosed ... (c) To the duly appointed guardian or conservator of the individual **or a person representing the individual** if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the **authorized representative** of the individual to whom the information pertains." Cal. Civ. Code § 1798.24. [Emphasis added.]

75. The statute does not discuss how to deal with the personal information of deceased persons. Nor does the statute make any distinctions between beneficiaries, trustees or executors for assigning the right of authorized representatives to receive the personal information of deceased parents. Nor does any case law interpreting this statute read such distinctions into the law.

1 76. The standard for releasing the personal medical information of deceased persons is set
2 out in the Confidentiality of Medical Information Act: “An authorization for the release of
3 medical information by a provider of health care, health care service plan, pharmaceutical
4 company, or contractor shall be valid if it ... (c) is signed and dated by one of the following ...
5 (4) **The beneficiary or personal representative of a deceased patient.**” Cal. Civ. Code §
6 56.11(c). [Emphasis added.] This standard is applied to the Information Practices Act: “The
7 disclosure of medical information regarding a patient that is subject to Civ. Code § 1798.24(b)
8 (disclosure with prior written consent of individual under Information Practices Act) requires an
9 authorization that complies with the provisions of Civ. Code §§ 56–56.37.” 37-429 California
Forms of Pleading and Practice--Annotated § 429.203.

10 77. Furthermore, as Claimant pointed out in his Jan. 8, 2018 letter to Webb, no law makes a
11 distinction between beneficiaries, trustees and executors for the purpose of authorizing and
12 receiving the personal information of deceased persons. (Exh. 22.) For example, “Any patient
13 representative shall be entitled to inspect patient records.” Cal. Health & Saf. Code § 123110.
14 “‘Patient’s representative’” or ‘representative’ means any of the following ... (4) The
15 **beneficiary** as defined in Section 24 of the Probate Code **or personal representative** as defined
16 in Section 58 of the Probate Code, of a deceased patient.” Cal. Health & Saf. Code § 123105(e).
17 [Emphasis added.]

18 78. The Medical Board’s own section of the Business & Professions Code places
19 beneficiaries and personal representatives on equal footing: “[I]n any investigation that involves
20 the death of a patient, the board may inspect and copy the medical records of the deceased
21 patient without the **authorization of the beneficiary or personal representative** of the
22 deceased patient ... Nothing in this subdivision shall be construed to allow the board to inspect
23 and copy the medical records of a deceased patient without a court order when **the beneficiary**
24 **or personal representative** of the deceased patient has been located and contacted but has
25 refused to consent.” Cal. Bus. & Prof Code § 2225(c)(1). [Emphasis added.] Thus, the code
26 enables either a beneficiary or the personal representative to authorize or refuse the Board’s
27 access to medical records of a deceased patient. The beneficiary and personal representative have
28 equal power.

1 79. Even if the law did place trustees above beneficiaries in this context, the termination of
2 trust equals them: “When the patient’s estate has no interest in preserving confidentiality, or
3 when the estate has been distributed and the representative discharged, the importance of
4 providing complete access to information relevant to a particular proceeding should prevail over
5 whatever remaining interest the decedent may have had in secrecy.” Cal. Evid. Code § 993, Law
6 Revision Commission Comments (1965).

7 80. Not only does the law clearly assign Claimant’s right to receive the information that he
8 seeks, his own court precedent establishes it: In Claimant’s writ action against the Medical
9 Board, he conclusively established his standing and beneficial right to receive the information
10 that he seeks. (Exh. 17.) At no point during the proceedings – from the demurrer to the trial – did
11 the Medical Board ever challenge Claimant’s beneficial right. Thus, Respondents should be
12 estopped from challenging his beneficial right in this action.

13 81. Despite the overwhelming weight of the law, the facts and issue preclusion, Respondents
14 nonetheless deny Claimant’s status as a beneficiary and authorized representative to receive his
15 mother’s personal medical information. Respondents’ position is arbitrary, capricious and
16 entirely lacking any legal or factual support.

17 82. The Medical Board’s arbitrary interpretation and application of myriad state laws
18 regarding beneficiaries call for a declaratory judgment by the court in order to clarify Claimant’s
19 rights as a beneficiary. In accordance with Cal. Civ. Code § 1798.47, Claimant also requests
20 injunctive relief in order to compel the release of the information that he is seeking.

21 83. As a direct and proximate result of Respondents’ conduct, Claimant has had to dedicate
22 substantial billable hours in order vindicate his rights. In accordance with Cal. Civ. Code §
23 1798.48, Claimant is entitled to recover the costs of the action, together with reasonable
24 attorney’s fees as determined by the court.

25 84. As a further direct and proximate result of Respondents’ conduct, Claimant has suffered
26 general damages and non-economic damages in the form mental and emotional pain. The amount
27 of damages stemming from Respondents’ conduct is not fully ascertained but within the
28 jurisdiction of the court and subject to proof at the time of trial.

THIRD CAUSE OF ACTION:
FAILURE TO ASSIST IN THE IDENTIFICATION OF RECORDS,
IN VIOLATION OF CAL. GOV. CODE § 6253.1.

As against all Respondents

85. Claimant incorporates the allegations of the preceding paragraphs as though fully set forth herein.

86. The California Public Records Act (CPRA) states: “When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall ... (1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated ... [and] (3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.” Cal. Gov. Code § 6253.1.

87. On February 10, 2015, Claimant made a public records request to the Medical Board, requesting documents relating to his mother’s death filed under Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R. § 1356.4 (Outpatient Surgery-Reporting of Death). (Exh. 11.) Respondent Webb responded by denying Claimant’s request for these documents on three bases: (1) “Records of complaints to, and investigations conducted by, state licensing agencies are not subject to disclosure pursuant to government Code section 6254(f);” because, she asserted (2) “[r]eports for the death of a patient **are treated** as complaints to the Board, and will not be disclosed.” [Emphasis added.] And (3) “[i]n addition, records of complaints and investigations of state licensing agencies are privileged under Evidence Code section 1040.” (Exh. 12.)

88. Respondents did absolutely nothing to assist Claimant to identify records or information that was responsive to his request, nor did they provide suggestions for overcoming any practical basis for denying access to the records or information he sought. Instead, Claimants stonewalled, and proffered false legal justifications for doing so.

89. During the subsequent writ proceedings, Respondents denied the existence of the report(s) Petitioner requested. But Respondents never explained why it was that they would deny the disclosure of nonexistent documents. ““Mistakes were made, perhaps,”” the court wrote,

1 quoting Petitioner. (Exh. 16:4; Exh. 17:11.) Claimant reiterates this statement with the
2 underlying implication: One often shifts to the passive voice in attempt to conceal responsibility
3 for misfeasance. Here, Respondents' denials often appear in the passive, i.e., "[r]eports for the
4 death of a patient **are treated** as complaints to the Board, and will not **be disclosed**." (Exh. 12.)
5 [Emphasis added.] Respondents should not be allowed to get away with such obfuscations and
6 evasions of responsibility.

7 90. When Claimant made his initial request to the Medical Board, he was unaware of the
8 Information Practices Act, and therefore he made his request under the Public Records Act.¹ It is
9 now clear that Claimant's request should have been under CIPA rather than CRPA at the onset.
10 "Mistakes were made." But Respondents did nothing to correct Claimant's mistake of law. The
11 magic words had to be precise. Most egregiously and inexplicably, Respondents did nothing to
12 assist with Claimant's ignorance of fact – that the documents he was seeking did not exist.
13 Respondents were happy to lead Claimant down the garden path to nowhere.

14 91. In reliance on Respondents' misleading statements and omissions, Claimant commenced
15 his writ action against the Medical Board and brought the case all the way to trial. Had
16 Respondents' not misrepresented both the law and the facts, Claimant would not have pursued an
17 illusory writ of mandate to obtain non-existent documents. Respondents sent Claimant on a wild
18 goose chase – and a very expensive one at that.

19 92. As a direct and proximate result of Respondents' misfeasance and nonfeasance, Claimant
20 has incurred substantial billable hours in attempt to vindicate his rights. Therefore, Claimant is
21 entitled to costs and reasonable attorney fees for this and the prior writ action, in accordance with
22 Cal. Gov. Code § 6259(d). Alternately, the costs and fees of the prior writ action constitute part
23 of his actual damages under his first two causes of action, pursuant to Cal. Civ. Code § 1798.48.

24 93. If and to the extent that any of the information that Claimant seeks is public information,
25 Claimant seeks declaratory and injunctive relief under Cal. Gov. Code § 6258, clarifying the
26 rights and duties of the parties, and enjoining the Medical Board to the release of the information
27 Claimant seeks.

28 ¹ When Claimant first contacted the Medical Board, he was a second-year law student. As such, although
he would have more knowledge of the law than a typical member of the general public, he was still a member of the
public just as anyone else who would contact the Board. If Respondents' behavior in this case is any indication of
how they treat other members of the public, it is all the more important for the court to intervene in order to correct
the Medical Board's mistreatment of the public.

1 **FOURTH CAUSE OF ACTION:**

2 **FAILURE TO PROVIDE PUBLIC INFORMATION IN VIOLATION OF**
3 **CAL. GOV. CODE § 6253 ET SEQ.**

4 **As Against All Respondents**

5 94. Claimant incorporates the allegations of the preceding paragraphs as though fully set
6 forth herein. Additionally, Claimant incorporates the allegations and contentions in the First and
7 Third Causes of Action of his Amended Petition for Writ of Mandate, incorporated by reference
8 here. (Exh. 14.)

9 95. The California Public Records Act (CPRA) states: “Except with respect to public records
10 exempt from disclosure by express provisions of law, each state or local agency, upon a request
11 for a copy of records that reasonably describes an identifiable record or records, shall make the
12 records promptly available ... Any reasonably segregable portion of a record shall be available
13 for inspection by any person requesting the record after deletion of the portions that are
14 exempted by law.” Cal. Gov. Code § 6253.

15 96. If and to the extent that any of the information that Claimant seeks is public information,
16 Claimant seeks injunctive relief under Cal. Gov. Code § 6258, compelling the release of the
17 information Claimant seeks. Additionally, in accordance with Cal. Gov. Code § 6259(d),
18 Claimant seeks costs and reasonable attorney fees.

19 **FIFTH CAUSE OF ACTION:**

20 **ERRONEOUS INTERPRETATION AND APPLICATION OF CAL. EVID. CODE § 1040**
21 **AND CAL. GOV. CODE § 6255**

22 **As Against All Respondents**

23 97. Claimant incorporates the allegations of the preceding paragraphs as though fully set
24 forth herein. Additionally, Claimant incorporates the allegations and contentions in the Second
25 Cause of Action of his Amended Petition for Writ of Mandate, incorporated by reference here.
26 (Exh. 14.)

27 98. California Evidence Code section 1040 creates a two-tiered privilege regime for “official
28 information ... acquired in confidence by a public employee in the course of his or her duty”:
(1) an unqualified privilege, when “disclosure is forbidden by an act of the Congress of the

United States or a statute of this state”; and (2) a qualified privilege for all other official information.

99. The qualified privilege in Cal. Evid. Code § 1040(b)(2) sets forth a balancing test for the withholding of official information “if ... disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.” Moreover, “in determining whether disclosure of the information is against the public interest, **the interest of the public entity as a party in the outcome of the proceeding may not be considered.**” *Id.* [Emphasis added.]

100. The California Public Records Act sets forth a similar balancing test for public agencies to justify withholding records from disclosure: “The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record **clearly outweighs the public interest** served by disclosure of the record.” Cal. Gov. Code § 6255.

101. Respondent Webb variously invokes the Evidence Code and the CPRA balancing tests in her letters to Claimant. (Exh. 12, 19, 21, 24.) Not surprisingly, in Webb’s analysis, the purported “public interest” in non-disclosure always outweighs Claimant’s interest in receiving the information that he seeks. However, the real interest here in withholding information is not the public interest, but the Medical Board’s own bureaucratic interest. Respondents’ analysis is entirely self-serving and should not be accepted by the court.

102. Alternately, Webb asserts that the records sought by claimant are exempt under Cal. Gov. Code § 6254, i.e., “This chapter does not require the disclosure of any of the following records ... (f) Records of complaints to, or investigations conducted by ... any other state or local agency for correctional, law enforcement, or licensing purposes.” First of all, this provision of the Public Records is not mandatory – it does not say the state agency *shall* withhold, but it may withhold. Second, this provision does not prevent “any reasonably segregable portion of a record” from being selectively disclosed, redacted or presented for in camera inspection. Cal. Gov. Code §§ 6253, 6259. Finally, and most importantly, Claimant seeks personal information that is privileged to him as a survivor and beneficiary of his mother. Cal. Civ. Code § 1798.34.

1 Respondents illicitly convert Claimant's Information Practices Act request into a Public Records
2 Act request, and then claim an absolute exemption and privilege for themselves. In fact, the
3 Medical Board is unlawfully withholding privileged information that belongs to the Claimant.

4 103. Respondents' improper assertions of exemption and privilege necessitate intervention by
5 the court in order to conduct a proper and unbiased balancing test. Claimant therefore seeks a
6 declaration regarding his rights under Cal. Evid. Code § 1040. Claimant then requests an
7 injunction, commanding the Medical Board to release the information that he seeks.

8 104. As a direct and proximate result of Respondents' conduct, Claimant has had to dedicate
9 substantial billable hours in order vindicate his rights. Under either Cal. Civ. Code § 1798.48(b)
10 or Cal. Gov. Code § 6259(d), Claimant is entitled to recover the costs of the action, together with
11 reasonable attorney's fees as determined by the court.

12 105. As a further direct and proximate result of Respondents' wrongful withholding of
13 information, Claimant has suffered general damages and non-economic damages in the form
14 mental and emotional pain. Claimant is entitled to recover such damages under Cal. Civ. Code §
15 1798.48(a). The amount of damages stemming from Respondents' conduct is not fully
16 ascertained but within the jurisdiction of the court and subject to proof at the time of trial.

17 **SIXTH CAUSE OF ACTION:**

18 **FAILURE TO PROVIDE ACCESS TO 'THE PEOPLE'S BUSINESS' IN VIOLATION**
19 **OF THE CALIFORNIA CONSTITUTION, ARTICLE I, SECTION 3(B)**

20 **As Against All Respondents**

21 106. Claimant incorporates the allegations of the preceding paragraphs as though fully set
22 forth herein. Claimant additionally incorporates the allegations and contentions in the Fourth
23 Cause of Action of his Amended Petition for Writ of Mandate, incorporated by reference here.
(Exh. 14.)

24 107. Article I, Section 3(b) of the California Constitution, provides that "the people have the
25 right of access to information concerning the conduct of the people's business, and, therefore ...
26 the writings of public officials and agencies shall be open to public scrutiny."

1 108. If and to the extent that any of the information Claimant seeks constitutes “the people’s
2 business,” Respondents must provide access to this information; and the court should enjoin the
3 Medical Board accordingly, in addition to awarding Claimant damages, costs and fees.

4
5 **SEVENTH CAUSE OF ACTION**

6 **VIOLATION OF PUBLIC POLICY AS SET OUT IN THE INFORMATION**
7 **PRACTICES ACT, THE BUSINESS & PROFESSIONS CODE, THE CALIFORNIA**
8 **EVIDENCE CODE, THE CALIFORNIA CONSTITUTION, AND THE CALIFORNIA**
9 **PUBLIC RECORDS ACT**

10 **As Against All Respondents**

11 109. Claimant incorporates the allegations of the preceding paragraphs as though fully set
12 forth herein. Claimant additionally incorporates the allegations and contentions in the Fifth
13 Cause of Action of his Amended Petition for Writ of Mandate, incorporated by reference here.
(Exh. 14.)

14 110. The Information Practices Act begins by declaring public policy: “The Legislature
15 declares that the right to privacy is a personal and **fundamental right** protected by Section 1 of
16 Article I of the Constitution of California and by the United States Constitution and that all
17 individuals have a right of privacy in information pertaining to them.” Cal. Civ. Code § 1798.1.
[Emphasis added.]

18 111. Here, by denying Claimant access to information that privileged to him, and instead
19 retaining this information for themselves, the Medical Board has violated a fundamental right of
20 the Claimant.

21 112. The Business & Professions Code sets forth the priorities of the Medical Board:
22 “Protection of the public shall be the highest priority for the Medical Board of California in
23 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
24 public is inconsistent with other interests sought to be promoted, the protection of the public
25 shall be paramount.” Cal. Bus. & Prof. Code § 2001.1.

26 113. The death of a patient is the worst possible outcome of a medical procedure. The Medical
27 Board’s investigations of such deaths are of vital importance to consumers and to the public
28 health of the people of California. If the Medical Board conducts its investigations so opaquely

1 that it will not even share the patient’s own privileged medical information, the Medical Board is
2 not serving the public. It is only protecting itself and is licensees.

3 114. In its own mission statement, the Medical Board fashions itself as the protector of
4 consumers and the keeper of its section of the Business & Professions Code: “The mission of the
5 Medical Board of California is to protect health care consumers through the proper licensing and
6 regulation of physicians and surgeons and certain allied health care professions and through the
7 vigorous, objective enforcement of the Medical Practice Act.” Unfortunately, by shrouding itself
8 in an impregnable cone of silence, the public has no way of evaluating how well the Medical
9 Board is performing on its mission. Consumers can only hope that “control” prevails over chaos,
10 and that somehow everything will work out well in the end. The Medical Board’s mission
11 statement is nothing but empty words.

12 115. California Evidence Code, section 1040 states that “in determining whether disclosure of
13 the information is against the public interest, the interest of the public entity as a party in the
14 outcome of the proceeding may not be considered.” But here, by “balancing” non-disclosure in a
15 patently self-serving way, the Medical Board makes its own interests paramount rather than the
16 public interest.

17 116. The California Public Records Act states, “In enacting this chapter, the Legislature,
18 mindful of the right of individuals to privacy, finds and declares that access to information
19 concerning the conduct of the people’s business is a **fundamental and necessary right** of every
20 person in this state.” Cal. Gov. Code § 6250. [Emphasis added.] However, in this instance, the
21 Medical Board has treated the public’s right of access as disposable and optional rather than
22 fundamental and necessary. The Medical Board’s “construing” of the law runs contrary to all
23 legislative declarations set out in the statutes.

24 117. The California Constitution states, “A statute, court rule, or other authority, including
25 those in effect on the effective date of this subdivision, shall be broadly construed if it furthers
26 the people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const,
27 Art. I § 3(b)(2). However, in this instance, the Medical Board has done just the opposite: It has
28 broadly construed the Evidence Code in order to limit the right of access, and it has narrowly
construed the Public Records Act to deny access. As this case amply demonstrates, the Medical

Board's practices are bureaucratically self-serving, and therefore contrary to law and public policy.

118. In its final report to Petitioner regarding the death of Audrey B. Murray (Exh. 13), Respondent Medical Board failed to provide Petitioner any information responsive to the central issue of his initial complaint to the Board, i.e., an explanation for and cause of his mother's death. (Exh. 1.) The MBC's failure to provide any substantive information renders Petitioner's entire effort of bringing a complaint to the Board futile. A futile consumer complaints system – one that is wholly unresponsive to the public – is contrary to public policy.

PRAYER FOR RELIEF

WHEREFORE, Claimant prays for judgment in his favor on all causes of action against all Respondents; and he requests both equitable and legal remedies. In the category of equitable remedies, Claimant requests that the court issue an injunction commanding Respondents to release all of the following documents and information as follows:

1. All information in the Medical Board's possession regarding Audrey B. Murray's medical condition, treatment and death, subject to Cal. Civ. Code § 1798.46;
2. All information in the Medical Board's possession relating to the cause and circumstances of Audrey Murray's death, subject to Cal. Civ. Code § 1798.46;
3. All reports, statements and other information acquired by the Medical Board during its investigation of Dr. James Matchison's treatment of Audrey Murray (MBC file number 800 2014 005263), subject to Cal. Civ. Code § 1798.46;
4. All statements made to the Medical Board by Dr. James Matchison and any other third parties regarding Audrey B. Murray's medical condition, treatment and death, including but not limited to information covered by the physician-patient privilege (Cal. Evid. Code § 993); and
5. If and to the extent that any of the documents described here are public documents, Claimant requests their release, subject to Cal. Gov. Code § 6259.
6. Claimant further seeks a declaratory judgment in order to clarify his rights and Respondents' duties under Cal. Civ. Code §§ 1798.24-34; Cal. Civ. Code § 56.11; Cal.

Gov. Code §§ 6253-55; and Cal. Evid. Code §§ 993, 1040.

Claimant further requests monetary damages, costs, and fees, as follows:

7. General, non-economic damages for mental suffering, as allowed by Cal. Civ. Code § 1798.48(a), in an amount according to proof;
8. General economic damages, encompassing costs and fees stemming from the prior writ action, and any other general damages in an amount according to proof at the time of trial, as allowed by Cal. Civ. Code § 1798.49 (remedies not exclusive);
9. Costs of suit, including reasonable attorney's fees, and any expert witness fees pursuant to Cal. Civ. Code § 1798.48(b);
10. If applicable, costs and reasonable attorney's under Cal. Gov. Code § 6259(d);
11. Any special damages, in an amount according to proof at the time of trial; and
12. For any other relief that is just and proper.

DATED: May 30, 2018

By: 

Bruce Thomas Murray, Esq.

Claimant *in propria persona*

1 Bruce Thomas Murray (SBN 306504)
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3 San Diego, CA 92102
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5 (619) 501-8556

6 Claimant, *in propria persona*

7 **PRESENTATION OF CLAIMS, CALIFORNIA DEPARTMENT OF GENERAL**
8 **SERVICES, GOVERNMENT CLAIMS PROGRAM**

9 BRUCE THOMAS MURRAY,
10 Claimant
11 v.
12 MEDICAL BOARD OF CALIFORNIA;
13 KIMBERLY KIRCHMEYER, in her capacity
14 as executive director, Medical Board of
15 California;
16 KERRIE D. WEBB, in her capacity as staff
17 counsel, Medical Board of California; and
18 DOES 1-25, inclusive,
19 Respondents

CASE NO.

CLAIMANT BRUCE T. MURRAY'S
EXHIBITS IN SUPPORT OF HIS
PRESENTATION OF CLAIMS AGAINST
THE MEDICAL BOARD OF CALIFORNIA
AND ITS AGENTS;
DECLARATION OF AUTHENTICITY

20
21 **I. DECLARATION**

22
23 Claimant Bruce T. Murray hereby declares, under penalty of perjury under the laws of the
24 State of California, that all of the documents provided here are true and correct copies of each.

25 **II. EXHIBITS**

26 Claimant Bruce T. Murray hereby submits the following exhibits in support of his
27 Presentation of Claims against the Medical Board of California and its agents:
28

1 **Exhibit 1:** A true and correct copy of the contents of Bruce T. Murray's May 15, 2014
2 complaint to the Medical Board regarding Dr. James Matchison's treatment of Audrey B. Murray.
3 The content of this complaint was filed through the Medical Board's online system.

4 **Exhibit 2:** A true and correct copy of Linda Serrano's May 23, 2014 letter to Bruce Murray,
5 requesting for authorization for release of medical records and a copy of Audrey Murray's death
6 certificate.
7

8 **Exhibit 3:** A true and correct copy of Audrey B. Murray's death certificate, listing Peter B.
9 Murray the "informant."

10 **Exhibit 4:** A true and correct copy of Bruce Murray's September 4, 2014 letter to Linda
11 Serrano, Associate Enforcement Analyst, Medical Board of California.
12

13 **Exhibit 5:** A true and correct copy of Peter B. Murray's September 9, 2014 letter to Linda
14 Serrano, and Peter Murray's signed Authorization for Release of Medical Information.

15 **Exhibit 6:** A true and correct copy of email exchanges – from September 2-9, 2014 –
16 between Bruce Murray and Cassandra Hockenson, Public Affairs Manager of the Medical Board of
17 California.
18

19 **Exhibit 7:** A true and correct copy of Bruce Murray's October 10, 2014 email to Linda
20 Serrano, requesting that the Medical Board provide him with copies of documents filed pursuant to
21 Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. § 1356.4.
22

23 **Exhibit 8:** A true and correct copy of Bruce Murray's December 15, 2014 email to Linda
24 Serrano, reiterating the request of his Oct. 10 email.

25 **Exhibit 9:** A true and correct copy of Bruce Murray's January 21, 2015 email to Linda
26 Serrano, email reiterating the requests of his Oct. 10 and Dec. 15 emails.
27
28

1 **Exhibit 10:** A true and correct copy of Linda Serrano’s January 21, 2015 email to Bruce
2 Murray, in which she stated, “We do not provide copies of those reports.”

3 **Exhibit 11:** A true and correct copy of Bruce Murray’s February 10, 2015 letter to Kerrie
4 Webb, requesting documents under the California Public Records Act.

5 **Exhibit 12:** A true and correct copy of Kerrie Webb’s February 20, 2015 letter to Bruce
6 Murray, denying his requests for documents.

7 **Exhibit 13:** A true and correct copy of Linda Serrano’s April 14, 2015 letter to Bruce
8 Murray. The letter states the Medical Board’s conclusion regarding MBC case number 800 2014
9 005263.

10 **Exhibit 14:** A true and correct copy of Bruce T. Murray’s Amended Petition for Writ of
11 Mandate against the Medical Board of California, Kimberly Kirchmeyer and Kerrie Webb, dated
12 January 2, 2016.

13 **Exhibit 15:** A true and correct copy of Bruce T. Murray’s Motion for Judgment on the Writ
14 and Supporting Memorandum of Points & Authorities for Murray v. Medical Board of California, et
15 al., No. BS158575, dated November 17, 2016.

16 **Exhibit 16:** A true and correct copy of Petitioner Bruce T. Murray’s brief in Reply to
17 Respondents’ Opposition to Motion for Judgment on Writ, dated January 3, 2017.

18 **Exhibit 17:** A true and correct copy of Judge Mary H. Strobel’s Judgment on the Writ, as
19 served to Bruce Murray on January 27, 2017.

20 **Exhibit 18:** A true and correct copy of Bruce Murray’s April 27, 2017 letter to Kerrie Webb,
21 requesting information under the Information Practices Act.

22 **Exhibit 19:** A true and correct copy of Kerrie Webb’s May 26, 2017 letter to Bruce Murray,
23 denying his requests for information.

1 **Exhibit 20:** A true and correct copy of Bruce Murray's July 10, 2017 letter to Kerrie Webb,
2 objecting to her refusal to release any information responsive to his request and objecting to her
3 illusory "production" of documents already in Claimant's custody and control.

4 **Exhibit 21:** A true and correct copy of Kerrie Webb's August 4, 2017 letter to Bruce
5 Murray, upholding her denial of records.

6 **Exhibit 22:** A true and correct copy of Bruce Murray's January 8, 2018 letter to Kerrie
7 Webb, explaining why his request for information did not require permission from the trustee of the
8 Audrey B. Murray Trust.

9 **Exhibit 23:** True and correct copies of various Chase Bank statements for the Audrey B.
10 Murray Trust, variously showing final distributions and the bank account going down to zero.

11 **Exhibit 24:** A true and correct copy of Kerrie Webb's January 29, 2018 letter to Bruce
12 Murray, denying all of Claimant's stated reasons why he is entitled to receive the information he is
13 seeking.

14 **Exhibit 25:** A true and correct copy of Bruce Murray's February 9, 2018 letter to Kerrie
15 Webb, in which Claimant stated his belief that any further meet and confer would be futile, "and this
16 matter is ripe for judicial review."

17
18
19
20 Dated: May 30, 2018

21
22 By: 

23
24
25 Bruce T. Murray
26 Claimant, *in propria persona*
27
28

Exhibit 1

May 15, 2014

Bruce T. Murray
1931 E Street
San Diego, CA 92102
619-501-8556
www.sagelaw.us
murray@sagelaw.us

The Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Dear Sir or Madame:

I am writing to ask your assistance regarding the death of my mother, Audrey B. Murray, who died last June about 30 hours following an elective heart procedure. The doctor, James C. Matchison, either can't or won't tell me what caused her death.

My mother was 86 and suffering from chronic obstructive pulmonary disease. At the time of the procedure, Dr. Matchison gave her about two years to live, but she only made it 30 hours into her assessed time period.

On June 11, 2013, I spoke with Dr. Matchison over the phone regarding my mother's death. He told me, "I don't know what caused her precipitous decline ... I have no great explanation for what happened."

I need better than that.

Dr. Matchison lost a patient – my mother – and if he does not know what caused her death, he really should if he is to continue operating on patients.

There may be a perfectly good explanation for what happened. Dr. Matchison may not have been negligent at all. But his non-explanation gets me nowhere closer to the truth; and unfortunately, California medical malpractice law provides me with no legal leverage to encourage a better explanation.

If indeed Dr. Matchison has no idea why he lost a patient, I think he owes an answer not only to me, but also to his medical peers.

Thank you for your assistance.

Bruce T. Murray



MEDICAL BOARD OF CALIFORNIA
Central Complaint Unit



May 23, 2014

BRUCE THOMAS MURRAY
1931 E STREET
SAN DIEGO, CA 92102



Re: JAMES CHRISTOPHER MATCHISON, M.D.
Control #: 800 2014 005263

Dear BRUCE THOMAS MURRAY:

This letter is concerning the correspondence you submitted to the Medical Board for review.

In order to proceed any further, a copy of your mother's, Audrey B. Murray's, medical records must be obtained. To do so, we must have you complete and sign the enclosed **Authorization for Release of Medical Records** forms. Please list any other health care providers involved in the care of your mother as you outlined in your complaint, including the complete names and addresses of each physician and facility. Please return these forms to our office by **June 16, 2014**.

It is important for you to know that the medical releases will not be valid if they contain any additional comments written on these forms. If you have any additional information concerning your complaint, please submit it on a separate sheet of paper. Do not write any comments on the medical release forms.

The following information must be completed on the enclosed forms (if applicable):

- Patient's name
- Date of birth
- **Date of death (enclose copy of the death certificate)**
- Medical Record Number (If known)
- Physician/facility complete name, address and telephone number
- Treatment date(s) from the listed provider(s)
- Signature of next of kin as shown on death certificate

Once the medical records are received, your complaint will be reviewed to determine whether the care provided by the physician was within the standard of practice of medicine.

Thank you for your cooperation and for contacting the Medical Board of California.

Sincerely,

LINDA SERRANO
Associate Enforcement Analyst
(916) 576-3231

Enclosures

STATE OF CALIFORNIA

CERTIFICATION OF VITAL RECORD

COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH

305201311606

CERTIFICATE OF DEATH

3201319025139

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
1. NAME OF DECEDENT - FIRST (Given) AUDREY		3. LAST (Family) MURRAY	
2. MIDDLE BEVAN		4. DATE OF BIRTH mm/dd/yyyy 05/11/1927	
5. AGE Yrs. 86		6. SEX F	
7. BIRTH DATE mm/dd/yyyy 05/11/1927		8. HOUR (24 Hour) 1600	
9. BIRTH STATE/FOREIGN COUNTRY NY		10. SOCIAL SECURITY NUMBER 418-34-4611	
11. BORN IN U.S. ARMED FORCES? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> UNK		12. MARITAL STATUS/PROF. (at time of death) DIVORCED	
13. EDUCATION - Highest Level/Grade ASSOCIATE		14. WAS DECEDENT HISPANIC/LATINO/SPANISH? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
15. DECEDENT'S RACE - Up to 3 Races, may be listed (see worksheet on back) CAUCASIAN		16. YEARS IN OCCUPATION 46	
17. USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED REALTOR		18. KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, food construction, employment agency, etc.) REAL ESTATE	
19. DECEDENT'S RESIDENCE (Street and number, or location) 5107 KINGSPINE RD.			
20. CITY ROLLING HILL ESTATES		21. COUNTY/TERRITORY LOS ANGELES	
22. ZIP CODE 90274		23. YEARS IN COUNTY 48	
24. STATE/FOREIGN COUNTRY CA		25. INFORMANT'S NAME, RELATIONSHIP PETER MURRAY, SON	
26. INFORMANT'S MAILING ADDRESS (Street and number, or rural route number, city or town, state and zip) 5 PATRINA CIR, LAGUNA NIGUEL, CA 92677		27. NAME OF SURVIVING SPOUSE/PROF - FIRST JAMES	
28. MIDDLE JENNINGS		29. LAST (BIRTH NAME) BEVAN	
30. NAME OF FATHER/PARENT - FIRST HELEN		31. MIDDLE HEINTZEMANN	
32. LAST (BIRTH NAME) HEINTZEMANN		33. BIRTH STATE NY	
34. BIRTH STATE MA		35. DATE OF DEATH mm/dd/yyyy 06/12/2013	
36. PLACE OF FINAL DISPOSITION AT SEA OFF THE COAST OF LOS ANGELES COUNTY		37. TYPE OF DISPOSITION CR/SEA	
38. SIGNATURE OF REGISTRAR JONATHAN FIELDING, MD		39. LICENSE NUMBER FD1289	
40. NAME OF FUNERAL, CREMATION, NEPTUNE SOCIETY		41. DATE mm/dd/yyyy 06/11/2013	
42. PLACE OF DEATH TORRANCE MEMORIAL MEDICAL CENTER		43. IF HOSPITAL, SPECIFY ONE <input checked="" type="checkbox"/> P <input type="checkbox"/> SNOP <input type="checkbox"/> DCA <input type="checkbox"/> Hospice <input type="checkbox"/> Nursing Home/UTC <input type="checkbox"/> Decedent's Home <input type="checkbox"/> Other	
44. COUNTY LOS ANGELES		45. FACILITY ADDRESS OR LOCATION WHERE FOUND (Street and number, or location) 3330 LOMITA BLVD	
46. CITY TORRANCE		47. CAUSE OF DEATH CARDIOPULMONARY ARREST	
48. CAUSE OF DEATH RESPIRATORY FAILURE		49. CAUSE OF DEATH CHRONIC OBSTRUCTIVE PULMONARY DISEASE	
50. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		51. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
52. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		53. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
54. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		55. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
56. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		57. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
58. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		59. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
60. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		61. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
62. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		63. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
64. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		65. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
66. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		67. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
68. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		69. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
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120. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		121. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
122. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		123. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
124. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		125. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
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140. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		141. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
142. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		143. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
144. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		145. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
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192. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		193. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
194. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		195. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
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198. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		199. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	
200. CAUSE OF DEATH CORONARY ARTERY DISEASE, AORTIC STENOSIS		201. CAUSE OF DEATH RIGHT HEART/LEFT HEART CATHETERIZATION 6/4/2013	

This is a true certified copy if the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.

HD 3262791

Jonathan E. Fielding, MD
Director of Public Health and Registrar

JUN 20 2013

This copy not valid unless prepared on engraved border displaying seal and signature of Registrar.

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

BRUCE Thomas MURRAY

1931 E Street ♦ San Diego, CA 92102 ♦ (619) 501-8556 ♦ murray@sagelaw.us

Sept. 4, 2014

Linda Serrano
Associate Enforcement Analyst
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831

Dear Ms. Serrano:

In order to avoid further delay, I am sending you the enclosed information and authorizations that are available to me at this time, in hopes that this will be sufficient to enable you to proceed with your investigation into my mother's death.

As I stated on my voice mail message to you, I am a beneficiary, but not the trustee/personal representative of my mother's estate. The California Business and Professions Code suggests that either the personal representative or a beneficiary of a deceased person is authorized to release confidential medical information:

"In any investigation that involves the death of a patient, the board may inspect and copy the medical records of the deceased patient without the authorization of the **beneficiary or personal representative** of the deceased patient ... Nothing in this subdivision shall be construed to allow the board to inspect and copy the medical records of a deceased patient without a court order when the **beneficiary or personal representative** of the deceased patient has been located and contacted but has refused to consent to the board inspecting and copying the medical records of the deceased patient. Cal Bus & Prof Code § 2225. (Emphasis added.)

The repeated disjunctive use of beneficiary OR personal representative strongly suggests that either the personal representative or the beneficiary is authorized to release the confidential informational of a deceased patient. Therefore, as a beneficiary of my mother, I hereby grant the Medical Board of California full permission and access to all of my mother's medical records, as necessary to conduct the investigation into her death.

Also, I note that the list of required information, as stated in your May 23 letter to me, includes the following bullet point: "Date of death (enclose copy of the death certificate)."

I note that the words, "copy of the death certificate," are listed in brackets, following the request for "date of death." I interpret this to mean that confirmation of the date of death is the most important information, rather than the death certificate itself.

Therefore, because I do not have possession of my mother's death certificate (nor is my signature on it), I am instead enclosing the Lexis record of her death. I hope that this is sufficient for your purposes.

Please feel free to contact me by phone or by email if you have any questions.

Sincerely,

Bruce Murray

Peter B Murray
5 Patrina Circle
Laguna Niguel, CA 92677
peter@peterbmurray.com
949-636-2352 Cell

September 9, 2014

Re: Audrey B Murray

To whom it may concern,
I Peter B Murray am the successor trustee of the Audrey B Murray estate. If you have any questions regarding this request you may contact my brother Bruce T Murray or myself.
Thank you for your assistance,


Peter B Murray, trustee



MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM
2005 Evergreen Street, Suite 1200, Sacramento, CA 95815



AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Patient Name: Audrey B. Murray	Date of Birth: 5/11/1927	Date of Death: 6/5/2013
Medical Record Number: (If known) 1348291	Control Number: 800 2014 005263	

I, the undersigned hereby authorize:

Physician/Facility: Torrance Memorial Medical Center

Address: 3330 Homity Blvd.

City/State/Zip Code: Torrance, CA 90505

Phone Number: 310-325-9110 Treatment Date(s): 6/5/2013

This medical release includes any and all dates of treatment records sought by the medical board.

to disclose medical records in the course of my diagnosis and treatment to the Medical Board of California, Enforcement Program, a healthcare oversight agency. This disclosure of records authorized herein is required for official use, including investigation and possible administrative and/or criminal proceedings regarding any violations of the laws of the State of California. This authorization shall remain valid for three years from the date of signature. A copy of this authorization shall be as valid as the original. I understand that I have the right to receive a copy of this authorization if requested by me. I understand that I have a right to revoke this authorization by sending written notification to the Medical Board of California at the above address. My written revocation will be effective upon receipt by the Medical Board of California but will not be effective to the extent that such persons have acted in reliance upon this Authorization. I understand that the recipient of my information is not a health plan or health care provider and the released information may no longer be protected by federal privacy regulations.

Patient Signature: _____ Date _____
or: Peter B. Murray Successor Trustee 9-9-14
Peter B. Murray Legal Representative Relationship Date

NOTE: Failure by a physician, podiatrist, or health care provider to provide the requested records within 15 days, or a health care facility within 30 days, of receipt of this request and authorization may constitute a violation of Section 2225.5 of the Medical Practice Act and may result in further action by the Board.

From: Hockenson, Cassandra@MBC
Sent: September 09, 2014 4:57 PM
To: Bruce T. Murray
Subject: Re: Looking for Medical Board's procedure manual

Bruce,
My apologies for taking a few days to reply. We do not have rules for the process and procedures of an investigation. Our Investigative Unit has Enforcement Operations Manuals that lay out the procedures of investigating a matter. I'm not sure they are public though, and if they are they will likely need redacting. They are voluminous so if they are available you would have to pay for them. If you would like to move forward please submit a Public Records Act request.
Thanks!
Cassandra

Cassandra Hockenson, JD
Medical Board of California
Public Affairs Manager
Work-(916) 263-2394
Cell- (916) 960-7249

-----Original Message-----

From: Bruce T. Murray [mailto:murray@sagelaw.us]
Sent: Wednesday, September 03, 2014 9:02 AM
To: Hockenson, Cassandra@MBC
Subject: Re: Looking for Medical Board's procedure manual

Cassandra,

Thank you for the quick reply.
What I am looking for are the actual promulgated rules of procedure that the Medical Board of California follows when conducting investigations.
So in other words, the Medical Board's equivalent of the Federal Rules of Civil Procedure or the California Code of Civil Procedure.
If this is not available on the MBC web site, if you could tell me the name of the rule book so I could ask for it at one of my local law libraries, or if you could give me the Blue Book citation so I could check on Lexis or Westlaw.

Thanks again for your help.
Bruce

--

On 9/2/2014 3:37 PM, Hockenson, Cassandra@MBC wrote:

> Hi Bruce,
> Here is a link to our Enforcement Process
> http://www.mbc.ca.gov/Enforcement/enforcement_process.pdf
> Please let me know if you have any questions or need anything else.
> Sincerely,
> Cassandra
>
> Cassandra Hockenson, JD
> Medical Board of California

*** Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. ***

Message-ID: <54385FE2.9030404@sagelaw.us>
Date: Fri, 10 Oct 2014 15:38:26 -0700
From: "Bruce T. Murray" <murray@sagelaw.us>
To: "Serrano, Linda@MBC" <Linda.Serrano@mbc.ca.gov>
Subject: Re: Control No. 800 2014 005263 Status

Dear Linda,

Thank you for your confirmation email and your attention to this matter.
In the interim, if you could please send me a copy of Dr. Matchison's
"Report for Death of Patient"/ "Outpatient Surgery--Reporting of Death"
regarding my mother (as the doctor is required by Cal Bus & Prof Code §
2240 and 16 CCR 1356.4), I would greatly appreciate it.

Best regards,
Bruce Murray

Message-ID: <548F5504.1010807@sagelaw.us>
Date: Mon, 15 Dec 2014 13:39:16 -0800
From: "Bruce T. Murray" <murray@sagelaw.us>
To: "Serrano, Linda@MBC" <Linda.Serrano@mbc.ca.gov>
Subject: Re: Control No. 800 2014 005263 Status

Dear Linda,

I was hoping to get copies of Dr. Matchison's § 2240 and § 1356.4 forms before Christmas. Would this be possible?

Best regards,
Bruce Murray

Cal Bus & Prof Code § 2240 -- Report for Death of Patient
16 CCR § 1356.4 -- Outpatient Surgery-Reporting of Death

On 10/8/2014 9:29 AM, Serrano, Linda@MBC wrote:

>
> Hello Bruce,
>
> I received your call where you wanted confirmation that we had
> received all the documents we requested, yes and thank you. The case
> is being processed. I will keep you informed of future status of your
> case via letter.
>
> Respectfully,
>
> *Linda Serrano*
>
> Associate Enforcement Analyst
>
> Medical Board of California
>
> 2005 Evergreen Street Suite 1200
>
> Sacramento, CA 95815
>
> (916) 576-3231 P
>
> (916) 263-2435 F
>
> ***Confidentiality Notice: This e-mail message, including any
> attachments, is for the sole use of the intended recipient(s) and may
> contain confidential and privileged information. Any unauthorized
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> the intended recipient, please contact the sender by reply e-mail and
> destroy all copies of the original message.***

Date: 1/21/15 1:49 p.m.
From: Bruce T. Murray
To: Serrano, Linda
Subject: Receipt of status update for control number 800 2014 005263

Dear Linda,

Today I received your letter/ status update for the case involving my Mom, Audrey Murray, and Dr. James Matchison. Thank you for the communication.

What I was hoping to receive were copies of the forms Dr. Matchison was statutorily required to file with the Medical Board when my Mom died under his care.

These forms are Cal Bus & Prof Code § 2240 -- Report for Death of Patient; and 16 CCR § 1356.4 -- Outpatient Surgery-Reporting of Death.

If you could please send me copies of these documents, I would greatly appreciate it.

Best regards,
Bruce Murray

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Bruce T. Murray
www.SageLaw.us
619-501-8556
626-429-8175 (cell)

Date: 1/21/15; 5:01 p.m.
From: Serrano, Linda
To: Bruce T. Murray
Subject: Re: Receipt of status update for control number 800 2014 005263

Mr. Murray,

We do not provide copies of those reports.

Linda Serrano
Associate Enforcement Analyst
Medical Board of California
2005 Evergreen Street Suite 1200
Sacramento, CA 95815
(916) 576-3231 P
(916) 263-2435 F

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-----Original Message-----

From: Bruce T. Murray [mailto:murray@sagelaw.us]
Sent: Wednesday, January 21, 2015 1:50 PM
To: Serrano, Linda@MBC
Subject: Receipt of status update for control number 800 2014 005263

Dear Linda,

Today I received your letter/ status update for the case involving my Mom, Audrey Murray, and Dr. James Matchison. Thank you for the communication.

What I was hoping to receive were copies of the forms Dr. Matchison was statutorily required to file with the Medical Board when my Mom died under his care.

These forms are Cal Bus & Prof Code § 2240 -- Report for Death of Patient; and 16 CCR § 1356.4 -- Outpatient Surgery-Reporting of Death.

If you could please send me copies of these documents, I would greatly appreciate it.

Best regards,
Bruce Murray

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Bruce T. Murray
www.SageLaw.us
619-501-8556
626-429-8175 (cell)

BRUCE Thomas MURRAY

1931 E Street ♦ San Diego, CA 92102 ♦ (619) 501-8556 ♦ murray@sagelaw.us

Feb. 10, 2015

Kerrie Webb, Esq.
Staff Counsel
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Re: Request for records regarding the death of Audrey B. Murray, DOD June 5, 2013,
MBC control number 800 2014 005263

Dear Ms. Webb:

In accordance with Cal Gov Code § 6253.1, I hereby request copies of the following documents, as filed by Dr. James C. Matchison, license number A00097926, regarding the death of my mother, Audrey B. Murray:

- Cal Bus & Prof Code § 2240 -- Report for Death of Patient
- 16 CCR § 1356.4 -- Outpatient Surgery-Reporting of Death.

As the son and beneficiary of my mother, I am entitled and authorized to receive any otherwise privileged and confidential information under Cal Bus & Prof Code § 2225(c)(1).

Thank you for your assistance.

Sincerely,

Bruce Murray



MEDICAL BOARD OF CALIFORNIA
Executive Office



February 20, 2015

Bruce Murray
1931 E. Street
San Diego, CA 92012

Re: Your Request for Documents relating to Audrey B. Murray

Dear Mr. Murray:

I am writing in response to your letter dated February 10, 2015, wherein you request records relating to the report of your mother's death pursuant to Business and Professions Code section 2240, and 16 CCR section 1356.4.

Please accept my condolences for your loss. Unfortunately, the Medical Board of California (Board) is unable to comply with your request. Records of complaints to, and investigations conducted by, state licensing agencies are not subject to disclosure pursuant to Government Code section 6254(f). In addition, records of complaints and investigations of state licensing agencies are privileged under Evidence Code section 1040. Reports for death of a patient are treated as complaints to the Board, and will not be disclosed.

Please feel free to contact me if you have further questions.

Sincerely,

Kerrie D. Webb
Senior Staff Counsel



MEDICAL BOARD OF CALIFORNIA
Central Complaint Unit



April 14, 2015

Bruce T. Murray
1931 E. Street
San Diego, CA 92102

Re: James Matchison, M.D.
Control Number: 800 2014 005263

Dear Mr. Murray:

The Medical Board of California has completed its review of your complaint against Dr. James Matchison.

As a licensing agency, the Board has the authority to ensure that its licensees abide by the provisions of the California Business and Professions Code. Your complaint and all relevant medical records were reviewed by the Board's Medical Consultant. It was the opinion of our consultant that the treatment rendered did not constitute a violation of the law as it relates to the practice of medicine. Therefore, the Board is unable to proceed with further action and has closed its case in this matter.

Thank you for contacting the Medical Board of California.

Sincerely,

Linda Serrano
Associate Enforcement Analyst

Control Number: 800 2014 005263

Bruce Thomas Murray, State Bar No. 306504
1931 E Street
San Diego, CA 92102
(619) 501-8556

Petitioner, *in propria persona*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BRUCE THOMAS MURRAY,)	Case No.: BS158575
)	
Petitioner,)	
)	
vs.)	AMENDED PETITION FOR WRIT OF
)	MANDATE
MEDICAL BOARD OF CALIFORNIA;)	
)	
KIMBERLY KIRCHMEYER, in her)	
)	Cal. Code Civ. Proc. § 1085
capacity as executive director,)	Cal. Code Civ. Proc. § 472
)	
Medical Board of California; and)	
)	
KERRIE D. WEBB, in her capacity as)	
)	
staff counsel, Medical Board of)	
)	
California)	

Respondents

I. REQUEST FOR MANDAMUS; INJUNCTIVE AND DECLARATORY RELIEF

1. Bruce Thomas Murray petitions this Honorable Court for the issuance of a writ of mandate, pursuant to Cal. Code Civ. Proc. § 1085, commanding Respondents to release all information in their possession regarding Audrey Bevan Murray's medical condition, treatment,

1 and the circumstances and cause(s) of her death, as requested in Petitioner's initial complaint to
2 the Medical Board. (See Exhibit 1.) Such information includes, but is not limited to, facts,
3 statements, analyses and conclusions contained in Medical Board of California investigation no.
4 800 2014 005263 regarding the death of Audrey B. Murray. In seeking this writ of mandate,
5 Petitioner asks the Court to overrule Respondents' final report to Petitioner, which contains no
6 substantive information. (See Exhibit 10.)

7 2. Petitioner asks this Honorable Court to issue a writ of mandate commanding Respondents
8 to release reports filed with the Medical Board pursuant to Cal. Bus. & Prof. Code § 2240
9 (Report for Death of Patient) and 16 C.C.R. 1356.4 (Outpatient Surgery--Reporting of Death)
10 regarding Audrey B. Murray's death. In seeking this mandate, Petitioner asks the Court to
11 expressly overrule Respondents' repeated and categorical rejections of his requests for this
information. (See Exhibits 4-9).

12 3. Petitioner asks this Court to declare invalid – as abuses of discretion – the Respondents'
13 erroneous interpretations of Cal. Gov. Code § 6254 (Records exempt from disclosure
14 requirements); Cal. Evid. Code § 1040 (Privilege for official information); Cal. Bus. & Prof.
15 Code § 2240; and 16 C.C.R. 1356.4. Additionally, Petitioner asks the Court to correct
16 Respondents' actions taken in accordance with these erroneous interpretations of law.

17 4. Petitioner requests costs and fees, as described below in the prayer for relief.

18 5. Petitioner requests any other appropriate declaratory and injunctive relief.

19 **II. THE PARTIES**

20 1. Bruce Thomas Murray is the son and beneficiary of Audrey Bevan Murray (deceased
21 June 5, 2013). Therefore, Bruce T. Murray is a beneficially interested party for the purposes of
22 Cal. Code Civ. Proc. §§ 1085-1086. As the beneficiary of his mother, Bruce Murray is entitled to
23 all information that would otherwise be privileged to her, according to Cal. Bus. & Prof. Code §
24 2225 (Privileged Communications; Confidential Information) and Cal. Health & Saf. Code §
25 123100 (Patient Access to Health Records). Additionally, for the purposes of the information
26 Petitioner seeks under the California Public Records Act, Bruce T. Murray is a member of the
27 public under Cal. Gov. Code § 6252(b).
28

1 2. Respondent, Medical Board of California, is a “board” under Cal. Bus. & Prof. Code §
2 2002; a “state agency” under Cal. Gov. Code § 6252(f); and a “public entity” under Cal. Evid.
3 Code § 1040. As a board/state agency/public entity, the Medical Board is under a duty to comply
4 with Cal. Gov. Code § 6253.1 (Agency to assist in inspection of public record), and is subject to
5 this Court’s jurisdiction for mandate under § 1085.

6 3. Respondent Kimberly Kirchmeyer, in her capacity as executive director of the Medical
7 Board of California, is ultimately responsible for the operations of the MBC, including the
8 MBC’s compliance with its duties under the law. Kimberly Kirchmeyer’s subordinates, as
9 described below, did in fact deny Petitioner’s requests for information.

10 4. Respondent Kerrie D. Webb, in her capacity as senior staff counsel of the Medical Board
11 of California, is responsible for the MBC’s compliance with state laws, including compliance
12 with the California Constitution, the California Public Records Act, the Business & Professions
13 Code and the Evidence Code. Kerrie D. Webb did in fact deny Petitioner’s request for the
14 information sought here, based on her erroneous interpretations of Cal. Gov. Code § 6254; Cal.
15 Evid. Code § 1040; Cal. Bus. & Prof. Code § 2240; and 16 C.C.R. 1356.4.

16 **III. FACTS**

17 1. At approximately 8 a.m. June 4, 2013, Dr. James C. Matchison (med. license no.
18 A00097926) performed a cardiac catheterization procedure on Petitioner’s mother.

19 2. Due to complications during the procedure, the procedure was aborted.

20 3. At approximately 10 a.m. June 4, 2013, Audrey Murray was admitted to the Torrance
21 Memorial Medical Center Progressive Care Unit (PCU) for post-procedure recovery.

22 4. At approximately 11:30 a.m. June 5, 2013, Mrs. Murray was discharged from Torrance
23 Memorial and into the care of her eldest son, William E. Murray, who brought her home.

24 5. After she arrived home, Mrs. Murray began experiencing severe pain in her chest and
25 shoulder, and difficulty in breathing. As her pain and distress increased, William Murray called
26 911.

27 6. At approximately 3:30 p.m., Mrs. Murray was transported back to Torrance Memorial for
28 emergency treatment.

1 7. At approximately 4 p.m. June 5, 2013, Audrey B. Murray, died in the emergency room at
2 Torrance Memorial Medical Center.

3 8. June 11, 2013, Petitioner spoke with Dr. Matchison over the phone, seeking an
4 explanation for and the cause of his mother's death. The doctor provided none.

5 9. May 15, 2014, Petitioner filed a complaint with the Medical Board, seeking an
6 explanation for and cause of his mother's death. (See Exhibit 1.)

7 10. May 19, 2014, the Medical Board confirmed receipt of Petitioner's complaint and
8 assigned it Control Number 800 2014 005263. Letter from Central Complaint Unit, Medical
Board of California, to Bruce T. Murray (May 19, 2014).

9 11. May 23, 2014, the Medical Board sent Petitioner a request for authorization for release of
10 medical records and a copy of Audrey Murray's death certificate. (See Exhibit 2b).

11 12. Sept. 4, 2014, Petitioner responded to Serrano's request, granting authorization to all
12 records privileged to Audrey Murray. Petitioner cited his authority to do so as "beneficiary or
13 personal representative of the deceased patient," under Cal. Bus. & Prof. Code § 2225.

14 13. Sept. 9, 2014, Peter B. Murray, Petitioner's brother and Audrey Murray's personal
15 representative, sent Serrano the same authorization for access to Audrey Murray's medical
16 records, along with a copy of Audrey Murray's death certificate. Peter Murray also authorized
17 the Medical Board to communicate directly with Bruce Murray regarding any privileged
18 information pertaining to the investigation of Audrey Murray's death. (See Exhibit 2.)

19 14. Sept. 2-9, 2014, Petitioner exchanged emails with Cassandra Hockenson, JD, Public
20 Affairs Manager of the Medical Board of California. Petitioner requested assistance in locating
21 the rules of procedure that the Medical Board of California follows when conducting
22 investigations of licensees. "If this is not available on the MBC web site, if you could tell me the
23 name of the rule book so I could ask for it at one of my local law libraries, or if you could give
24 me the Blue Book citation so I could check on Lexis or Westlaw," Murray wrote. (See Exhibit
3.)

25 15. Sept. 9, 2014, Hockenson replied to Petitioner, "We do not have rules for the process and
26 procedures of an investigation. Our Investigative Unit has Enforcement Operations Manuals that
27 lay out the procedures of investigating a matter. I'm not sure they are public though, and if they
28 are they will likely need redacting." (See Exhibit 3.)

1 16. Oct 10, 2014, Petitioner sent an email to Linda Serrano, requesting that the Medical
2 Board provide Petitioner with Dr. Matchison's required filings under Cal. Bus. & Prof. Code §
3 2240 (Report for Death of Patient) and 16 C.C.R. § 1356.4 (Outpatient Surgery-Reporting of
4 Death). [See Exhibit 4.] Serrano did not reply to this email.

5 17. Dec. 15, 2014, Petitioner sent another email to Linda Serrano, reiterating the request of
6 his Oct. 10 email. (See Exhibit 5.) Serrano did not reply to this email.

7 18. At various times during 2014 and 2015, Petitioner called Serrano and left voice messages
8 requesting the aforementioned documents. Serrano did not return these phone calls.

9 19. Jan. 15, 2015, the Medical Board confirmed receipt of all records and documentation
10 required for a review of the complaint. Letter from Linda Serrano, Associate Enforcement
11 Analyst, Medical Board of California, to Bruce T. Murray (Jan. 15, 2015).

12 20. Jan. 21, 2015, Petitioner sent Serrano another email reiterating the requests of his Oct. 10
13 and Dec. 15 emails. (See Exhibit 6.) This time, finally, Serrano replied to the email, saying only,
14 "We do not provide copies of those reports." (See exhibit 7.)

15 21. Feb. 10, 2015, Petitioner sent Kerrie Webb a letter requesting copies of Dr. Matchison's
16 required filings under Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R.
17 § 1356.4 (Outpatient Surgery-Reporting of Death). Petitioner made this request pursuant to Cal.
18 Gov. Code § 6253.1 (Agency to assist in inspection of public record) and his status as the
19 beneficiary of his mother, under Cal. Bus. & Prof. Code § 2225(c)(1). (See Exhibit 8.)

20 22. In a letter dated Feb. 20, 2015, Respondent Webb denied Petitioner's request for these
21 documents on three bases: (1) "Records of complaints to, and investigations conducted by, state
22 licensing agencies are not subject to disclosure pursuant to government Code section 6254(f);"
23 because, she asserts (2) "[r]eports for the death of a patient **are treated** as complaints to the
24 Board, and will not be disclosed." [Emphasis added.] And (3) "[i]n addition, records of
25 complaints and investigations of state licensing agencies are privileged under Evidence Code
26 section 1040." (See Exhibit 9.)

27 23. In her Feb. 20 letter, Respondent Webb failed to cite any authority for her interpretations
28 of Cal. Gov. Code § 6254, Cal. Evid. Code § 1040, Cal. Bus. & Prof. Code § 2240, and 16
C.C.R. § 1356.4. Specifically, she failed (1) to provide any authority for "treating" reports for the
death of patient as "complaints to the Board"; (2) she did not cite any authority for exempting

1 these documents from the disclosure requirements of Cal. Gov. Code § 6253.1; and (3) she did
2 not cite any authority for assigning an absolute privilege to the information sought by Petitioner
3 (rather than the qualified privilege of § 1040).

4 24. Additionally, Respondent Webb failed to “provide suggestions for overcoming any
5 practical basis for denying access to the records or information sought,” as is required by Cal.
6 Gov. Code § 6253.1(a)(3).

7 25. In a document dated April 14, 2015, the Medical Board provided Petitioner with its final
8 report regarding case number 800 2014 005263. The final report contains six-sentences and 108
9 words. The report concludes, “It was the opinion of our consultant that the treatment rendered
10 did not constitute a violation of the law as it relates to the practice of medicine. ... Thank you for
11 contacting the Medical Board of California.” (See Exhibit 10.)

12 26. The final report does not state the bases for the Medical Board’s conclusion, nor does it
13 include any facts or analysis of the facts involved in the investigation. Most critically, the final
14 report does not provide any explanation for or the cause of Audrey Murray’s death – the central
15 issue of Petitioner’s initial complaint to the board. (See exhibit 1.) Therefore, the final report is
16 entirely useless to Petitioner.

17 27. The final report, coupled with the Medical Board’s total and unqualified refusal to
18 provide Petitioner with any additional information, leave Petitioner aggrieved and exhausted of
19 any administrative remedy.

20 28. Petitioner has no plain, speedy and adequate remedy in the ordinary course of law other
21 than the relief sought in this petition, in that there is no alternate method for Petitioner to obtain
22 the information sought. Petitioner therefore seeks a writ of mandate under Cal. Code Civ. Proc. §
23 1085 and declaratory and injunctive relief under and Cal. Gov. Code §6258, compelling
24 Respondents to perform their legal duty to disclose the information and documents requested
25 here.

26 **IV. STANDARD OF REVIEW FOR MANDAMUS**

27 Mandamus lies to compel the performance of a clear, present, and ministerial duty where
28 the petitioner has a beneficial right to performance of that duty. *Carrancho v. California Air
Resources Bd.*, 111 Cal. App. 4th 1255 (3d Dist. 2003). Additionally, an ordinary mandamus

1 action under Cal. Code Civ. Proc. § 1085 permits judicial intervention to correct an abuse of
2 ministerial discretion. *Id.*

3 Abuse of discretion is established when “the public official or agency invested with
4 discretion acted arbitrarily, capriciously, fraudulently, or without due regard for his rights, and
5 that the action prejudiced him.” *Gordon v. Horsley*, 86 Cal. App. 4th 336, 338 (2001). Otherwise
6 formulated, an abuse of discretion exists where the law imposes on a public officer specific
7 duties that the officer “refuses to perform because of an erroneous conception” as to the officer’s
8 legal duties. *Berkeley Unified School Dist. of Alameda County v. City of Berkeley*, 141 Cal. App.
2d 841 (1st Dist. 1956).

9 In this action for mandamus, Petitioner will show that Respondents acted (1) “without
10 due regard for his rights, and that the action prejudiced him”; (2) that Respondents refused to
11 perform because of “an erroneous conception” of law; and, (3) by the stronger argument, that
12 Respondents acted “arbitrarily and capriciously.”

13 **FIRST CAUSE OF ACTION**

14 **Abuse of discretion in denying Petitioner’s requests for information** 15 **under Cal. Gov. Code § 6254**

16 Petitioner incorporates the allegations of the preceding paragraphs as though fully set
17 forth herein.

18 In her three-pronged attack on Petitioner’s request for information regarding the death of
19 his mother, Respondent Webb justified withholding Petitioner’s requests for information by (1)
20 claiming such information is exempt from disclosure under Cal. Gov. Code § 6254(f), because,
21 (2) she asserts, “[r]eports for the death of a patient are treated as complaints to the Board, and
22 will not be disclosed.” [See Exhibit 9.] (The third prong of Webb’s justification, the claim of
23 privilege under Cal. Evid. Code § 1040, will be analyzed in the second cause of action.)
24 Respondent Webb’s bases for denying Petitioner’s request for information are erroneous and
25 constitute an abuse of discretion, for the reasons set forth below.

26 California Government Code section 6254 states, “[T]his chapter **does not require** the
27 disclosure of any of the following records ... (f) Records of complaints to, or investigations
28

1 conducted by, or records of intelligence information or security procedures of, the office of the
2 Attorney General and the Department of Justice.” [Emphasis added.]

3 The California Supreme Court has explained the scope of Cal. Gov. Code § 6254: “It is
4 manifest ... that the effect of section 6254 is limited to ‘this chapter’ (i.e. the California Public
5 Records Act, dealing with public inspection of certain governmental documents) and has no
6 application to any procedure not under that act. Moreover, section 6260, the final provision of
7 the act, specifically provides that ‘The provisions of this chapter shall not be deemed in any
8 manner to affect . . . the rights of litigants, including parties to administrative proceedings, under
9 the laws of discovery of this state.’” *Shepherd v. Super. Court*, 17 Cal. 3d 107, 123-24 (1976).

10 Here, by calling the reports requested by Petitioner “complaints to the Board,”
11 Respondent Webb erroneously places these documents under the ambit the exemption described
12 in Cal. Gov. Code § 6254(f). However, nothing in the language of Cal. Gov. Code § 6254 states
13 that reports for the death of a patient “are treated” as complaints to the Board – and thus exempt
14 from disclosure; and nothing in the statute’s annotations indicates such a treatment. Moreover,
15 with respect to Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4, neither of these laws
16 contains statutory language attaching them to Cal. Gov. Code § 6254(f); nor do these laws
17 contain statutory language indicating that information filed under them is exempt from
18 disclosure.

19 Respondent Webb fails to cite any authority indicating who, how or why such reports
20 “are treated” as complaints to the board, and thus falling under the exemption of Cal. Gov. Code
21 § 6254(f). Indeed case history is completely lacking any record of a court “treating” such
22 documents as complaints to the Board, and thus, exempt from disclosure. Absent such a holding,
23 and absent statutory language indicating that information filed under § 2240 and 16 C.C.R.
24 1356.4 constitutes a “complaint to the Board,” Respondent Webb’s claim of exemption in this
25 instance is unwarranted, unreasonable and prejudicial, and thus an abuse of discretion.

26 Furthermore, by unilaterally and unreasonably “treating” Cal. Bus. & Prof. Code § 2240
27 and 16 C.C.R. 1356.4 as non-disclosable “complaints to the Board,” Respondent Webb and/or
28 the Medical Board have abused their discretion by creating an untenable legal fiction. Logically,
when a medical doctor files a report under Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4,
he does so out of a statutorily mandated duty, not because he or she is “complaining” about

1 anything to the Board. And certainly by filing such reports, a doctor cannot logically be said to
2 be “complaining” about himself, or even more farfetched, complaining about his patient. Thus,
3 by creating this logically unsound legal fiction, Respondents have acted arbitrarily and
4 capriciously. In doing so, Respondent Webb and/or the Medical Board have acted in a manner
5 that is prejudicial to Petitioner and the public.

6 The fiction of calling “reports for the death of a patient ... as complaints to the Board”
7 finds no support in the statutory text, the common law, or in reason. This false formulation of
8 law should not be allowed to stand in any context. Petitioner therefore asks the court to declare
9 this legal fiction invalid, and compel Respondents to release the information that Petitioner
10 rightly seeks.

11 In summary thus far, Respondents have abused their discretion by (1) acting without due
12 regard to Petitioner’s rights, thus prejudicing him; (2) willfully distorting the law through a false
13 and illogical legal fiction; and (3) in doing so, Respondents have acted arbitrarily and
14 capriciously and denied Petitioner his beneficial rights. Petitioner therefore asks the court to
15 issue the requested mandamus to cure these abuses.

16 **SECOND CAUSE OF ACTION**

17 **Abuse of discretion in the interpretation and application of Cal. Evid. Code § 1040**

18 Petitioner incorporates the allegations of the preceding paragraphs as though fully set
19 forth herein.

20 In her three-pronged rejection of Petitioner’s request for information regarding the death
21 of his mother, Respondent Webb declares that “records of complaints and investigations of state
22 licensing agencies are privileged under Evidence Code section 1040.” [See Exhibit 9.] This is an
23 overbroad – and hence inaccurate statement in several respects, as will be analyzed below.

24 First, California Evidence Code section 1040 creates a two-tiered privilege regime for
25 “official information ... acquired in confidence by a public employee in the course of his or her
26 duty”: (1) an unqualified privilege, when “disclosure is forbidden by an act of the Congress of
27 the United States or a statute of this state”; and (2) a qualified privilege for all other official
28 information. *Id.*

1 The California Supreme Court has defined the applicability and scope of Cal. Evid. Code
2 § 1040: This provision of the Evidence Code “represents the exclusive means by which a public
3 entity may assert a claim of governmental privilege based on the necessity for secrecy.” *Pitchess*
4 *v. Superior Court*, 11 Cal.3d 531, 540 (1974).

5 The California Supreme Court has explained the relation between Cal. Evid. Code § 1040
6 and Cal. Gov. Code § 6254. As the Court noted in *Shepherd* and its progeny, the exemptions
7 listed in section 6254 are limited to that chapter, i.e. the California Public Records Act, and have
8 no application to any procedure not under that act. “**Accordingly the provisions of section 6254**
9 **of the Government Code cannot serve as a basis of absolute privilege under Evidence Code**
10 **section 1040**, subdivision (b)(1).” *Shepherd*, 17 Cal. 3d at 123. [Emphasis added.]

11 But here, Respondent Webb has done precisely this – weaving together Cal. Gov. Code §
12 6254 and Cal. Evid. Code § 1040 – and coming out with a Gordian knot of absolute privilege.
13 The process by which Webb arrives at this multi-layered lock-down appears as follows: First, as
14 analyzed above in the first cause of action, Webb improperly triggers Cal. Gov. Code § 6254 by
15 creating the legal fiction that a doctor’s mandatory reporting to the Medical Board constitutes a
16 “complaint to the board.” Then, if this fiction falters, Webb jumps to the unqualified privilege
17 under Cal. Evid. Code § 1040(b)(1) by declaring that “records of complaints and investigations
18 of state licensing agencies are privileged under Evidence Code section 1040.” [See Exhibit 9.]
19 This statement is yet another fiction, since Cal. Evid. Code § 1040 contains no such language.
20 Webb’s language appears to be lifted from Cal. Gov. Code § 6254(f), and then grafted onto the
21 Evidence Code. What the Evidence Code does address is “information acquired in confidence by
22 a public employee” – information which is then sub-categorized as either unqualified or qualified
23 for the purposes of the balancing test. § 1040.

24 Since the information Petitioner seeks is not prohibited by Cal. Gov. Code § 6254, or any
25 other state or federal law, disclosure of this information is more properly weighed under the
26 qualified privilege.

27 The qualified privilege of Cal. Evid. Code § 1040(b)(2) sets out a balancing test, in which
28 the court inquires whether “[d]isclosure of the information is against **the public interest** because
there is a necessity for preserving the confidentiality of the information that outweighs the
necessity for disclosure in the interest of justice.” *Id.* [Emphasis added.] Moreover, “[i]n

1 determining whether disclosure of the information is against the public interest, **the interest of**
2 **the public entity as a party in the outcome of the proceeding may not be considered.”** *Id.*
3 [Emphasis added.]

4 In weighing the public interest under § 1040(b)(2), when a death is involved, the court
5 often favors releasing information to citizens and individuals, rather than granting secrecy to
6 public agencies and public officials. For example, in a wrongful death action against police
7 officers, the California Supreme Court held that the respondent district attorney’s claim of
8 “public interest in secrecy ... wholly fails”; and then the Court ordered a particularized balancing
9 of each item of information sought by the petitioner – the mother of a 14-year-old boy who had
10 been shot and killed by the police. *Shepherd*, Cal. 3d at 130. In a dependency action stemming
11 from the death of a child under petitioner father’s care, the appellate court vacated a decision
12 granting the respondent police agencies’ motion to quash petitioner’s request for forensic reports
13 compiled by those agencies. *Michael P. v. Super. Court*, 92 Cal. App. 4th 1036, 1048 (2001). In
14 so doing, the court weighed strongly in favor of the petitioner father’s interest in obtaining
15 information gathered by public agencies. *Id.* In another wrongful death action against the police,
16 the appellate court rejected the city’s claim of blanket privilege to deny documents sought by the
17 petitioner – the father of an 18-year-old man who had been shot and stabbed to death by a retired
18 officer. *Dominguez v. Super. Court of L.A. Cnty.*, 101 Cal. App. 3d 6 (1980). In that case, the
19 court noted that determination of the public interest required consideration of the consequences
20 to the litigant of nondisclosure, as well as the importance of the material sought to the fair
21 presentation of the litigant’s case, the availability of the material to the litigant by other means,
22 and the effectiveness and relative difficulty of such other means. *Id.* at 12.

23 Common to all of the cases quoted above is death – death by police shooting, death by
24 allegedly negligent child care, and an alleged murder under the color of law. Similarly here,
25 Petitioner’s action for writ of mandate arises from a death – the death of Petitioner’s mother
26 following a routine outpatient medical procedure. Death is the worst possible outcome of
27 surgery. But yet, Petitioner has received no explanation whatsoever for his mother’s death from
28 either the doctor or the Medical Board. Petitioner has no other means to obtain this information.
Therefore, in the interests of justice, Petitioner asks the court to weigh all of the information
sought by Petitioner according to the standards of Cal. Evid. Code § 1040(b)(2).

THIRD CAUSE OF ACTION
VIOLATION OF GOV. CODE §6250, et seq.

Failure to Properly Respond to a Request under the California Public Records Act

Petitioner incorporates the allegations of the preceding paragraphs as though fully set forth herein.

The California Public Records Act (CPRA) provides that, “[e]xcept with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available ... Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.” Cal. Gov. Code § 6253.

Additionally, Cal. Gov. Code § 6253.1 states that a public agency “**shall** ... (1) [a]ssist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated ... [and] (3) [p]rovide suggestions for overcoming any practical basis for denying access to the records or information sought.” Cal. Gov. Code § 6253.1(a).

A member of the public who believes that public records are being improperly withheld may bring suit for mandate to enforce the Public Records Act. Govt. Code §§ 6258, 6259(a). If the Court finds that the public official’s decision to refuse disclosure is not justified, it shall order the public official to make the records public. *Id.* § 6259(b).

As analyzed in the first cause of action above, Respondent Webb erroneously classified the information sought by Petitioner as exempt under Cal. Gov. Code § 6254(f). Moreover, by inappropriately applying a blanket privilege to all information sought by Petitioner, Respondent Webb failed to identify and release “any reasonably segregable portion” of the records sought by Petitioner, as required by CPRA.

In her trifecta denial of Petitioner’s request for information, Respondent Webb provided no suggestions or any practical basis for overcoming her denial of access to the records and information sought by Petitioner, as is required by CRPA. (See Exhibit 9.) Webb’s Feb. 20 letter is, in reality, bureaucratic stonewalling.

1 Based on the Respondents' failure to follow the requirements of CRPA, Petitioner
2 requests that the court grant him all remedies available under CPRA – mandamus and disclosure
3 of the information he seeks.

4
5 **FOURTH CAUSE OF ACTION**
6 **VIOLATION OF CALIFORNIA CONSTITUTION ARTICLE I, SECTION 3(b)**
7 **Failure to Provide Access to 'The People's business'**

8 Petitioner incorporates the allegations of the preceding paragraphs as though fully set
9 forth herein.

10 Respondents' failure to provide a proper response to Petitioner's Public Records Act
11 Request and make public documents available for inspection violates Article I, Section 3(b) of
12 the California Constitution, which provides that "the people have the right of access to
13 information concerning the conduct of the people's business, and, therefore ... the writings of
14 public officials and agencies shall be open to public scrutiny." *Id.*

15 Reports for death of patients – and the Medical Board's investigation of such deaths – are
16 of vital importance to consumers and to the public health of the people of California. Thus, such
17 information constitutes "the people's business." Therefore, in compliance with the state
18 constitution, all nonprivileged portions of such reports should rightly be made available to the
19 public, and information privileged to the deceased should be made available to beneficiaries.

20 **FIFTH CAUSE OF ACTION**
21 **Violation of Public Policy with Respect to the California Constitution, the California Public**
22 **Records Act, the Medical Practice Act and the California Evidence Code**

23 The Business & Professions Code sets forth the priorities of the Medical Board:
24 "Protection of the public shall be the highest priority for the Medical Board of California in
25 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
26 public is inconsistent with other interests sought to be promoted, the protection of the public
27 shall be paramount." Cal. Bus. & Prof. Code § 2001.1. However, in this instance, by writing in
28 its own non-statutory exemption to the Public Records Act, the Medical Board has put its own

1 interests first rather than the public interest. Thus, the Medical Board has acted contrary to public
2 policy.

3 In its own mission statement, the Medical Board fashions itself as the protector of
4 consumers and the keeper of its section of the Business & Professions Code: “The mission of the
5 Medical Board of California is to protect health care consumers through the proper licensing and
6 regulation of physicians and surgeons and certain allied health care professions and through the
7 vigorous, objective enforcement of the Medical Practice Act, and to promote access to quality
8 medical care through the Board’s licensing and regulatory functions.” However in this instance,
9 by stonewalling the Petitioner, the Medical Board has made itself the adversary rather than the
10 advocate of the consumer.

11 California Evidence Code, section 1040 states that “in determining whether disclosure of
12 the information is against the public interest, the interest of the public entity as a party in the
13 outcome of the proceeding may not be considered.” However, in this instance, by cherry-picking
14 portions of the Evidence Code that are most convenient to itself, the Medical Board makes itself
15 the priority rather than the public.

16 The California Constitution states, “A statute, court rule, or other authority, including
17 those in effect on the effective date of this subdivision, shall be broadly construed if it furthers
18 the people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const,
19 Art. I § 3(b)(2). However, in this instance, the Medical Board has done just the opposite: It has
20 broadly construed the Evidence Code in order to limit the right of access, and it has narrowly
21 construed the Medical Practice Act to create classified documents – totally absent any legislative
22 intent to do so.

23 The California Public Records Act states, “In enacting this chapter, the Legislature,
24 mindful of the right of individuals to privacy, finds and declares that access to information
25 concerning the conduct of the people’s business is a fundamental and necessary right of every
26 person in this state.” Cal. Gov. Code § 6250. However, in this instance, the Medical Board has
27 treated access to information concerning the people’s business as optional and discretionary
28 rather than fundamental and necessary. Indeed, this case demonstrates that the Medical Board’s
practices are bureaucratically self-serving, and therefore contrary to law and public policy.

1 In its final report to Petitioner regarding the death of Audrey B. Murray, Respondent
2 Medical Board failed to provide Petitioner any information responsive to the central issue of his
3 initial complaint to the Board, i.e., an explanation for and cause of his mother's death. (See
4 exhibits 1 and 10.) The MBC's failure to provide any relevant information renders Petitioner's
5 entire effort of bringing a complaint to the Board futile. A futile consumer complaints system –
6 one that is wholly unresponsive to consumers – is contrary to public policy.

7 **PRAYER FOR RELIEF**

8 1. Wherefore, Petitioner prays that this Court issue a peremptory writ of mandate directing
9 Respondents to provide copies of all of the documents described here within 10 days of this
10 Court's ordering them to do so. Particularly, as described on pp. 1-2, Petitioner seeks copies of
11 the following:

- 12 (i) All information, reports and statements acquired by the Medical Board regarding
13 Audrey B. Murray's medical condition, treatment and death.
- 14 (ii) All documents contained in MBC file number 800 2014 005263 that contain
15 information regarding the cause and circumstances Audrey B. Murray's death.
- 16 (iii) All statements made to the Medical Board by Dr. James Matchison and any other
17 third parties regarding Audrey B. Murray's medical condition, treatment and death.
- 18 (iv) All documents filed with the Medical Board pursuant to Cal. Bus. & Prof. Code §
19 2240 and 16 C.C.R. 1356.4 – or the equivalent underlying information – regarding
20 the death of Audrey Bevan Murray.
- 21 (v) If any information in these documents is legitimately and lawfully privileged to
22 someone other than Audrey B. Murray or her beneficiaries, or appropriately requires
23 redaction or in camera inspection, Petitioner requests that the Medical Board produce
24 an accompanying privilege log that (a) expressly makes the claim (b) with specificity
25 and particularity; (c) states on whose behalf the Medical Board is asserting the
26 privilege, and (d) describes the nature of the documents, communications, or tangible
27 things not produced or disclosed – and does so in a manner that, without revealing
28 information itself privileged or protected, will enable Petitioner to assess the claim.

PETITIONER ALSO PRAYS AS FOLLOWS:

2. That the Court find that Respondents have violated Petitioner's rights under the California Constitution, Article I, sec. 3, and Cal. Gov. Code §§ 6250 *et seq.*, by failing to produce the documents he requested and otherwise failing to cooperate with him in any way;

3. That Respondents' erroneous interpretations and legal fictions that modify and distort the California Evidence Code, the California Public Records Act, and the Business & Professions Code, be found invalid and contrary to law and public policy;

4. For court costs pursuant to Cal. Gov. Code § 6259(d).

5. For fees pursuant to Cal. Code Civ. Proc. § 1021.5 ("private attorney general") and/or the equitable private attorney fee doctrine, to the extent that success on the merits of any cause of action here confers a significant public benefit or vindicates a constitutional right.

6. For other relief this Court deems just and proper.

Dated: Jan. 2, 2016

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Bruce Murray". The signature is fluid and cursive, with a large loop at the end of the last name.

By: Bruce Thomas Murray, Esq.

Petitioner, in pro per

619-501-8556

1 VERIFICATION

2

3

4 I, Bruce Thomas Murray, declare that I am the Petitioner in the above-entitled
5 proceeding; that I have written and read the foregoing Petition for a Writ of Mandate, and know
6 the contents thereof; that the same is true of my own knowledge except as to the matters which
7 are therein alleged on information or belief, and, as to those matters, I also believe them to be
8 true.

9 I declare under the penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct. Executed this second of January, 2016, in San Diego, California.

11

12

13 Bruce Murray

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Bruce Thomas Murray, State Bar No. 306504
1931 E Street
San Diego, CA 92102
(619) 501-8556

Petitioner, *in propria persona*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BRUCE THOMAS MURRAY,

Petitioner,

vs.

MEDICAL BOARD OF CALIFORNIA;

KIMBERLY KIRCHMEYER, in her

capacity as executive director,

Medical Board of California; and

KERRIE D. WEBB, in her capacity as

staff counsel, Medical Board of

California

Respondents

) Case No.: BS158575

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)
) **MEMORANDUM IN SUPPORT OF MOTION
FOR JUDGMENT ON WRIT**

) Cal. Code Civ. Proc. § 1085

) Hearing date: January 17, 2017

) Hearing time: 9:30 a.m.

) Department 82

) Hon. Judge Mary H. Strobel

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TABLE OF AUTHORITIES

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I. INTRODUCTION

Petitioner Bruce Thomas Murray respectfully asks this court to issue a writ of mandate, pursuant to Cal. Code Civ. Proc. § 1085, commanding the Respondents to release all information in their possession regarding Audrey Bevan Murray's medical condition, treatment, and the circumstances and cause(s) of her death. Such information includes, but is not limited to, facts, statements, analyses and conclusions contained in Medical Board of California investigation No. 800 2014 005263 regarding the death of Audrey B. Murray.

Respondents rejected Petitioner's repeated requests for this information based on their unsupported interpretations of Cal. Gov. Code § 6254 (Records exempt from disclosure requirements) and Cal. Evid. Code § 1040 (Privilege for official information) (Am. Pet., Exh. 9). Case law strongly supports the contrary interpretation of these laws. As the case record will show, in situations involving death, the court weighs decidedly in favor of releasing information to interested parties, while weighing against government agencies that seek to conceal and withhold such information. (See page 9 below.) This memorandum will analyze the applicable statutes and the case law to demonstrate why the Medical Board's interpretation and application of law is incorrect, prejudicial to the Petitioner, and contrary to the public interest.

Therefore, Petitioner asks this Honorable Court to declare the correct meaning of the laws cited here, and apply those laws accordingly.

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II. STATEMENT OF THE CASE

1. On October 5, 2015, Bruce T. Murray filed a petition for writ of mandate under Cal. Code Civ. Proc. § 1085, seeking the release of information relating to the cause and circumstances of his mother's death. Petitioner also asked for declaratory and injunctive relief under and Cal. Gov. Code §6258.

2. On November 23, 2015, Respondents filed a demurrer to the petition. In addition to their legal points seeking the dismissal of Petitioner's case, Respondents' demurrer also included factual denials, claiming that specific records sought by petitioner did not exist. The records in question pertained to reports filed pursuant to Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R. 1356.4) (Outpatient Surgery--Reporting of Death). However,

Respondents did not deny possession of the underlying facts that would be included in such reports.

3. On January 2, 2016, Petitioner filed an amended petition.
4. On February. 8, 2016, Respondents demurred to the amended petition.
5. On April 14, 2016, Petitioner filed an opposition to Respondents' demurrer.
6. On May 3, 2016, this court overruled Respondents' demurrer in its entirety.

III. STATEMENT OF FACTS

1. At approximately 8 a.m. June 4, 2013, Dr. James C. Matchison (med. license no. A00097926) performed a cardiac catheterization procedure on Petitioner's mother, Audrey Bevan Murray.
2. Due to complications during the procedure, the procedure was aborted.
3. At approximately 10 a.m. June 4, 2013, Mrs. Murray was admitted to the Torrance Memorial Medical Center Progressive Care Unit (PCU) for post-procedure recovery.
4. At approximately 11:30 a.m. June 5, 2013, Mrs. Murray was discharged from Torrance Memorial and into the care of her eldest son, William E. Murray, who brought her home.
5. After she arrived home, Mrs. Murray began experiencing severe pain in her chest and shoulder, and difficulty in breathing. As her pain and distress increased, William Murray called 911.
6. At approximately 3:30 p.m., Mrs. Murray was transported back to Torrance Memorial for emergency treatment.
7. At approximately 4 p.m. June 5, 2013, Audrey B. Murray, died in the emergency room at Torrance Memorial Medical Center.
8. On June 11, 2013, Petitioner spoke with Dr. Matchison over the phone, seeking an explanation for and the cause of his mother's death. The doctor provided none.
9. On May 15, 2014, Petitioner filed a complaint with the Medical Board, seeking an explanation for and cause of his mother's death. (Am. Pet., Exh. 1.)
10. On Feb. 10, 2015, Petitioner sent Kerrie Webb a letter requesting copies of reports filed under Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R. § 1356.4 (Outpatient Surgery-Reporting of Death). Petitioner made this request pursuant to Cal. Gov.

Code § 6253.1 (Agency to assist in inspection of public record) and his status as the beneficiary of his mother, under Cal. Bus. & Prof. Code § 2225(c)(1). (Am. Pet., Exh. 8.)

11. In a letter dated Feb. 20, 2015, Webb denied Petitioner's request for these documents on three bases: (1) "Records of complaints to, and investigations conducted by, state licensing agencies are not subject to disclosure pursuant to government Code section 6254(f);" because, she asserted (2) "[r]eports for the death of a patient are treated as complaints to the Board, and will not be disclosed." Finally, (3) "[i]n addition, records of complaints and investigations of state licensing agencies are privileged under Evidence Code section 1040." (Am. Pet., Exh. 9.)

12. In her Feb. 20 letter, Respondent Webb did not cite any authority for her interpretations and applications of Cal. Gov. Code § 6254 and Cal. Evid. Code § 1040. Specifically, she provided no executive or common law authority for assigning an absolute privilege to the information sought by Petitioner, rather than the qualified privilege of § 1040(b)(2).

Additionally, Webb cited no authority for treating the optional exemptions of § 6254 as a mandatory nondisclosure regime.

13. In a document dated April 14, 2015, the Medical Board provided Petitioner with its final report regarding case number 800 2014 005263. The final report contains six-sentences and 108 words. The final report does not state the bases for the Medical Board's conclusion, nor does it include any facts or analysis. Most critically, the final report does not provide any explanation for or the cause of Audrey Murray's death – the central issue of Petitioner's initial complaint to the board. (Am. Pet., Exh. 1.)

14. Any other relevant facts contained in the Amended Petition are incorporated by reference here.

IV. STANDARD OF REVIEW

Because the remaining issues in this case are legal rather than factual, independent judgment is the most appropriate standard of review.

"The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action." *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 8, (1998) (Quoting from 27 Cal. Law Revision Com. Rep. (1997)).

1 Within the scope of independent judgment, the California Supreme Court has laid out a
2 varying scale of deference the court should afford to administrative actions – with high deference
3 given to agency-enabled quasi-legislative (law-making) actions; and a low level of deference
4 given to agency interpretations of general law, i.e., law that is not specific to the agency, or law
5 that does not govern the agency.

6 “Unlike quasi-legislative regulations adopted by an agency to which the Legislature has
7 confided the power to ‘make law,’ and which, if authorized by the enabling legislation, bind this
8 and other courts as firmly as statutes themselves, the binding power of an agency’s interpretation
9 of a statute or regulation is contextual: Its power to persuade is both circumstantial and
10 dependent on the presence or absence of factors that support the merit of the interpretation.” *Id.*
11 at 7.

12 “The appropriate degree of judicial scrutiny in any particular case is perhaps not
13 susceptible of precise formulation, but lies somewhere along a continuum with nonreviewability
14 at one end and independent judgment at the other. [Citation] Quasi-legislative administrative
15 decisions are properly placed at that point of the continuum at which judicial review is more
16 deferential; ministerial and informal actions do not merit such deference, and therefore lie toward
17 the opposite end of the continuum.” *W. States Petroleum Assn. v. Super. Court*, 9 Cal. 4th 559,
18 575-76 (1995) (Mosk, J, quoting from *Shapell Industries, Inc. v. Governing Board*, 1
19 Cal.App.4th 218, 232 (1991)).

20 Here, the Medical Board’s administrative actions rest primarily on its interpretations and
21 applications of the California Evidence Code, section § 1040; and the California Public Records
22 Act (Cal. Gov. Code § 6250 et seq.). The Evidence Code is broadly applicable and entirely non-
23 specific to the Medical Board; and the Public Records Act binds the Medical Board as “any other
24 state or local agency (Cal. Gov. Code § 6254(f)).” Since the Public Records Act is generally
25 applicable to any state agency, the Medical Board cannot be said to possess the “special
26 familiarity with satellite legal and regulatory issues” that it would from its own enabling
27 legislation, quasi-legislation, or the Business & Professions Code. *Yamaha*, 19 Cal. 4th at 11. As
28 that court noted, “An important corollary of agency interpretations, however, is their diminished
power to bind. Because an interpretation is an agency’s legal opinion, however ‘expert,’ rather

1 than the exercise of a delegated legislative power to make law, it commands a commensurably
2 lesser degree of judicial deference.” *Id.*

3 Accordingly here, the Medical Board’s interpretations of the Evidence Code and the
4 Public Records Act should be independently judged at the low end of the deference scale.

5 6 **V. ARGUMENT**

7 8 **(1) THE COURT SHOULD COMPEL THE MEDICAL BOARD TO RELEASE** 9 **ALL INFORMATION IN ITS POSSESSION REGARDING THE DEATH OF** 10 **AUDREY B. MURRAY (INCLUDING INFORMATION THAT WOULD** 11 **OTHERWISE BE CONTAINED IN REPORTS FILED PURSUANT TO CAL.** 12 **BUS. & PROF. CODE § 2240 AND 16 C.C.R. 1356.4) BECAUSE THIS** 13 **INFORMATION IS NOT PROPERLY PRIVILEGED TO RESPONDENTS OR** 14 **EXEMPT FROM DISCLOSURE.**

15 In her three-pronged rejection of Petitioner’s request for information regarding the death
16 of his mother, Respondent Webb justified withholding Petitioner’s requests for information by
17 (1) claiming such information is exempt from disclosure under Cal. Gov. Code § 6254(f),
18 because, (2) she asserted, “[r]eports for the death of a patient are treated as complaints to the
19 Board, and will not be disclosed.” (Am. Pet., Exh. 9.) (The third prong of Webb’s justification,
20 the claim of privilege under Cal. Evid. Code § 1040, will be analyzed in the second argument
21 below.)

22 As is discussed at length in the Amended Petition, incorporated by reference here,
23 Respondent Webb’s bases for denying Petitioner’s request for information are erroneous, and
24 therefore should be afforded no deference. By calling the reports requested by Petitioner
25 “complaints to the Board,” Respondent Webb illicitly places these documents under the ambit
26 the exemption described in Cal. Gov. Code § 6254(f). Contrary to this interpretation, nothing in
27 the language of Cal. Gov. Code § 6254 states that reports for the death of a patient “are treated”
28 as complaints to the Board – and thus exempt from disclosure. Nor do Cal. Bus. & Prof. Code §
2240 or 16 C.C.R. 1356.4 contain any statutory language or annotations indicating that
information filed under them constitutes a “complaint” that is exempt from disclosure.

1 Respondents fail to cite any authority indicating who, how or why such reports “are
2 treated” as complaints to the board, and thus falling under the exemption of Cal. Gov. Code §
3 6254(f). The case history is lacking any instance of a court “treating” such documents as
4 complaints to the Board, and thus, exempt from disclosure. Respondents’ claim of exemption
5 finds no support in the case record, and therefore it should not be allowed to stand in this case.

6 Furthermore, as analyzed in the Amended Petition, it strains logic to call reports for the
7 death of a patient “complaints to the board.” When a medical doctor files a report under Cal.
8 Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4, he does so out of a statutorily mandated duty,
9 not because he or she is “complaining” about anything to the Board. And certainly by filing such
10 reports, a doctor cannot logically be said to be “complaining” about himself, or even more
11 farfetched, complaining about his patient. Respondents’ “treatment” of these laws is self-serving
12 legal fiction, which should be afforded no deference by this court.

13 In its demurrers, the Medical Board denied the existence the particular records sought by
14 petitioner, Cal. Bus. & Prof. Code § 2240 (Report for Death of Patient) and 16 C.C.R. 1356.4
15 (Outpatient Surgery–Reporting of Death), which Petitioner believed were filed by Dr. James
16 Matchison regarding the death of Audrey B. Murray. Regardless of whether or not these
17 particular records exist, the Medical Board has never denied possession of **the underlying**
18 **information** that would be contained in these reports, including but not limited to “the
19 circumstances of the patient’s death.” 16 C.C.R. 1356.4(c).

20 At this point, whether or not these particular documents exist is irrelevant; it is **the**
21 **underlying information** that counts. Respondents do not deny possession of the underlying
22 information. Indeed, if the Medical Board did conduct an investigation into Dr. James
23 Matchison’s treatment of Petitioner’s mother, as the Medical Board claims, then it certainly
24 should have garnered information as to “the circumstances of the patient’s death,” and such
25 information would presumably include more than an empty conclusory statement, with no facts
26 or analysis. (Am. Pet., Exh. 9.)

27 Therefore, the underlying information that would otherwise be contained reports filed
28 pursuant to Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4 should be released to
Petitioner, in addition to all other information in its possession regarding Audrey B. Murray’s
medical condition, treatment and death.

1 **(2) THE COURT SHOULD WEIGH ALL OF THE INFORMATION SOUGHT BY**
2 **PETITIONER UNDER THE BALANCING TEST FOR A QUALIFIED**
3 **PRIVILEGE SET FORTH IN CAL. EVID. CODE § 1040, BECAUSE**
4 **RESPONDENTS ARE NOT ENTITLED TO AN ABSOLUTE PRIVILEGE.**

5 California Evidence Code section 1040 creates two tiers of privilege “official information
6 ... acquired in confidence by a public employee in the course of his or her duty”: (1) an
7 unqualified privilege, when “disclosure is forbidden by an act of the Congress of the United
8 States or a statute of this state”; and (2) a qualified privilege for all other official information. *Id.*

9 The gateway question, in order to establish an absolute privilege, is whether the
10 information sought for disclosure is prohibited by statute. The candidate here is Cal. Gov. Code §
11 6254, which states, “[T]his chapter **does not require** the disclosure of any of the following
12 records ... (f) Records of complaints to, or investigations conducted by, or ... any investigatory
13 or security files compiled by any other state or local agency for ... licensing purposes.”
14 [Emphasis added.]

15 By the statute’s plain language, it is clear that the exemption is permissive and not
16 mandatory. The statute does not say, for example, “Records of investigations conducted by any
17 state agency are privileged and must not be disclosed.” The statute provides no such blanket
18 exemption – as the Medical Board claims. Non-disclosure of such information, according to the
19 statute, is optional and discretionary. But the Medical Board, in abusing its discretion, has
20 misconstrued the law into affording it an absolute privilege; when instead, the qualified privilege
21 is the most appropriate standard.

22 In the context of discovery disputes, the California Supreme Court has affirmed the
23 application of a qualified privilege to exemptions under the Public Records Act. “Accordingly
24 the provisions of Cal. Gov’t Code § 6254 of the Government Code cannot serve as a basis of
25 absolute privilege under Cal. Evid. Code § 1040 (b)(1), in circumstances such as those in the
26 case at bench.” *Shepherd v. Super. Court*, 17 Cal. 3d 107, 113 (1976). In the particular
27 circumstances of that case, the respondent public agencies (police department and district
28 attorney) refused the plaintiff’s discovery requests, and the plaintiff sought motions to compel.
The trial court denied the motions, but the Supreme Court remanded the case with a clarified
analytical framework for the qualified privilege. *Id.* at 127-8.

1 In the present case, the Petitioner’s action for a writ of mandate is analogous to a motion
2 to compel or a subpoena *duces tecum*, as was the procedural situation in *Shepherd*. As such, the
3 same rules of Cal. Evid. Code § 1040 apply. Thus, Medical Board is not entitled to an absolute
4 privilege. Instead, it is appropriate to assess the information sought by Petitioner under the
5 qualified privilege, and weigh it accordingly.

6 Cal. Evid. Code § 1040(b)(2) sets out a balancing test, in which the court determines
7 whether “[d]isclosure of the information is against the public interest because there is a necessity
8 for preserving the confidentiality of the information that outweighs the necessity for disclosure in
9 the interest of justice.” *Id.* Moreover, “[i]n determining whether disclosure of the information is
10 against the public interest, **the interest of the public entity as a party in the outcome of the
proceeding may not be considered.**” *Id.* [Emphasis added.]

11 In weighing the public interest under § 1040(b)(2), when a death is involved, the court
12 favors releasing information to citizens and individuals, rather than granting secrecy to public
13 agencies and public officials. For example, in a wrongful death action against police officers, the
14 California Supreme Court held that the respondent district attorney’s claim of “public interest in
15 secrecy ... wholly fails”; and then the Court ordered a particularized balancing of each item of
16 information sought by the petitioner – the mother of a 14-year-old boy who had been shot and
17 killed by the police. *Shepherd*, Cal. 3d at 130. In a dependency action stemming from the death
18 of a child under petitioner father’s care, the appellate court vacated a decision granting the
19 respondent police agencies’ motion to quash petitioner’s request for forensic reports compiled by
20 those agencies. *Michael P. v. Super. Court*, 92 Cal. App. 4th 1036, 1048 (2001). In so doing, the
21 court weighed strongly in favor of the petitioner father’s interest in obtaining information
22 gathered by public agencies. *Id.* In another wrongful death action against the police, the
23 appellate court rejected the city’s claim of blanket privilege to deny documents sought by the
24 petitioner – the father of an 18-year-old man who had been shot and stabbed to death by a retired
25 officer. *Dominguez v. Super. Court of L.A. Cnty.*, 101 Cal. App. 3d 6 (1980). In that case, the
26 court noted that determination of the public interest required consideration of the consequences
27 to the litigant of nondisclosure, as well as the importance of the information to the fair
28 presentation of the litigant’s case, the availability of the material to the litigant by other means,
and the effectiveness and relative difficulty of such other means. *Id.* at 12.

1 Common to all of the cases quoted above is death – death by police shooting, death by
2 allegedly negligent child care, and an alleged murder under the color of law. Similarly here,
3 Petitioner’s action for writ of mandate arises from a death – the death of Petitioner’s mother
4 following a routine outpatient medical procedure. Death is the worst possible outcome of
5 surgery. But yet, Petitioner has received no explanation whatsoever for his mother’s death from
6 either the doctor or the Medical Board. Petitioner has no other means to obtain this information.

7 In light of the common law pattern favoring disclosure when a death is involved,
8 Petitioner asks the court to weigh all of the information sought by Petitioner and release it to
9 him.

10 **(3) TO THE EXTENT THAT ANY OF THE INFORMATION IN THE**
11 **RESPONDENTS’ POSSESSION IS LEGITIMATELY PRIVILEGED TO THEM,**
12 **THIS INFORMATION SHOULD BE SEGREGATED, AND THE REMAINING**
13 **INFORMATION RELEASED TO THE PETITIONER.**

14 The California Public Records Act provides that, “[e]xcept with respect to public records
15 exempt from disclosure by express provisions of law, each state or local agency, upon a request
16 for a copy of records that reasonably describes an identifiable record or records, shall make the
17 records promptly available ... Any reasonably segregable portion of a record shall be available
18 for inspection by any person requesting the record after deletion of the portions that are
19 exempted by law.” Cal. Gov. Code § 6253.

20 As analyzed above, Respondents improperly assigned themselves a blanket privilege and
21 wrongly classified ALL the information sought by Petitioner as exempt under Cal. Gov. Code §
22 6254(f). In doing so, Respondents failed to identify and release “any reasonably segregable
23 portion” of the records sought by Petitioner, as required by CPRA, and more broadly under the
24 Evidence Code.

25 If the Medical Board conducted an investigation into Audrey Murray’s medical
26 treatment, as the Respondents claim, then the Medical Board necessarily possesses information
27 regarding Audrey Murray’s medical condition. This information is privileged to the Petitioner,
28 Bruce Murray, as the beneficiary of his mother. This information is **not** privileged to the Medical
Board.

1 The Medical Board may not assert a blanket privilege over all of the information in its
2 possession without parsing information that is either public or privileged to the Petitioner.
3 Therefore, the Respondents must be compelled to release this information.

4
5 **(4) THE COURT SHOULD COMPEL THE MEDICAL BOARD TO RELEASE**
6 **THE INFORMATION SOUGHT BY PETITIONER IN THE SPIRIT OF THE**
7 **STATE CONSTITUTION, I.E., TO PROVIDE ACCESS TO ‘THE PEOPLE’S**
8 **BUSINESS.’**

9 Article I, Section 3(b) of the California Constitution provides that “the people have the
10 right of access to information concerning the conduct of the people’s business, and, therefore ...
11 the writings of public officials and agencies shall be open to public scrutiny.” Cal. Const., Art. I
§ 3(b).

12 The Medical Board’s investigations of patient deaths are of vital importance to
13 consumers and to the public health of the people of California. The issue is one of life and death.
14 It is hard to imagine any other category of information more critical to “the people’s business.”
15 Therefore, in the spirit of the state constitution, all nonprivileged portions of such investigations
16 should rightly be made available to the public, and information that is privileged to the deceased
17 should be made available to the beneficiaries.

18 In the spirit of the California state constitution, the Medical Board should be compelled
19 to release the information the Petitioner seeks regarding the death of his mother.

20 **(5) THE COURT SHOULD COMPEL THE MEDICAL BOARD TO RELEASE**
21 **THE INFORMATION SOUGHT BY PETITIONER AS A MATTER OF PUBLIC**
22 **POLICY WITH RESPECT TO THE MEDICAL PRACTICE ACT, THE**
23 **CALIFORNIA PUBLIC RECORDS ACT, THE CALIFORNIA EVIDENCE**
24 **CODE, AND THE CALIFORNIA STATE CONSTITUTION.**

25 The public policy of this state, as enunciated in many sources, clearly favors openness,
26 transparency and accountability.

27 The Business & Professions Code sets forth the priorities of the Medical Board:
28 “Protection of the public shall be the highest priority for the Medical Board of California in

1 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
2 public is inconsistent with other interests sought to be promoted, the protection of the public
3 shall be paramount.” Cal. Bus. & Prof. Code § 2001.1. However, in this case, by liberally
4 granting themselves a blanket exemption to the Public Records Act, the Respondents have put
5 their own interests first rather than the public interest. Thus, the Medical Board has acted
6 contrary to public policy and must be corrected.

7 In its own mission statement, the Medical Board fashions itself as the protector of
8 consumers and the keeper of its section of the Business & Professions Code: “The mission of the
9 Medical Board of California is to protect health care consumers through the proper licensing and
10 regulation of physicians and surgeons and certain allied health care professions and through the
11 vigorous, objective enforcement of the Medical Practice Act, and to promote access to quality
12 medical care through the Board’s licensing and regulatory functions.” <http://www.mbc.ca.gov>.
13 However in this case, by stonewalling the Petitioner, the Medical Board has made itself the
14 adversary rather than the advocate of the consumer.

15 California Evidence Code, section 1040 states that “in determining whether disclosure of
16 the information is against the public interest, the interest of the public entity as a party in the
17 outcome of the proceeding may not be considered.” However in this case, by cherry-picking
18 portions of the Evidence Code that are most convenient to itself, the Medical Board makes itself
19 the priority rather than the public.

20 The California Constitution states, “A statute, court rule, or other authority, including
21 those in effect on the effective date of this subdivision, shall be broadly construed if it furthers
22 the people’s right of access, and narrowly construed if it limits the right of access.” Cal. Const,
23 Art. I § 3(b)(2). However, in this case, the Medical Board has done just the opposite: It has
24 broadly construed the Evidence Code in order to limit the right of access, and it has narrowly
25 construed the Medical Practice Act in order to classify and withhold broad categories of
26 documents – totally absent any legislative intent to do so.

27 The California Public Records Act states, “In enacting this chapter, the Legislature,
28 mindful of the right of individuals to privacy, finds and declares that access to information
concerning the conduct of the people’s business is a fundamental and necessary right of every
person in this state.” Cal. Gov. Code § 6250. However, in this case, the Medical Board has

1 treated access to information concerning the people's business as optional and discretionary
2 rather than fundamental and necessary. Indeed, this case demonstrates that the Medical Board's
3 practices are bureaucratically self-serving, and therefore contrary to law and public policy.

4 For all of the reasons stated above, Petitioner Bruce Thomas Murray respectfully asks
5 this court to issue a writ of mandate, ordering the Medical Board to release all of the information
6 in its possession regarding his mother's medical condition, treatment and death. The
7 particularities of this request are as follows:

- 8 (i) All information, reports and statements acquired by the Medical Board regarding
9 Audrey B. Murray's medical condition, treatment and death.
- 10 (ii) All documents contained in MBC file number 800 2014 005263 that contain
11 information regarding the cause and circumstances Audrey B. Murray's death.
- 12 (iii) All statements made to the Medical Board by Dr. James Matchison and any other
13 third parties regarding Audrey B. Murray's medical condition, treatment and death.
- 14 (iv) All of the underlying information that would otherwise be contained in a report filed
15 with the Medical Board pursuant to Cal. Bus. & Prof. Code § 2240 and 16 C.C.R.
16 1356.4 regarding the death of Audrey Bevan Murray.
- 17 (v) If any information in these documents is legitimately and lawfully privileged to
18 someone other than Audrey B. Murray or her beneficiaries, or appropriately requires
19 redaction or in camera inspection, Petitioner requests that the Medical Board produce
20 an accompanying privilege log that (a) expressly makes the claim (b) with specificity
21 and particularity; (c) states on whose behalf the Medical Board is asserting the
22 privilege, and (d) describes the nature of the documents, communications, or tangible
23 things not produced or disclosed – and does so in a manner that, without revealing
24 information itself privileged or protected, will enable Petitioner to assess the claim.

25 Petitioner also prays for costs and fees, as so particularized in the Amended Petition, and for
26 any other relief this Court deems just and proper.

1 Dated: November 17, 2016

2
3 Respectfully Submitted,

4 A handwritten signature in cursive script that reads "Bruce Murray". The signature is written in dark ink and is positioned to the left of the printed name.

5
6 Bruce Thomas Murray, Esq.

7 Petitioner, in pro per

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1 **SUMMARY**

2 Petitioner Bruce Thomas Murray hereby replies to Respondents' "Opposition to First
3 Amended Petition for Writ of Mandate and Motion for Judgment on Writ."

4
5 **ARGUMENT**

6
7 **I. STANDARD OF REVIEW – LOW DEFERENCE**

8 The appropriate standard of review in this case is independent judgment – at the low end
9 of the deference scale – based on the standard set forth in *Yamaha Corp. of Am. v. State Bd. of*
10 *Equalization* (19 Cal. 4th 1, 8, (1998)) and its progeny.

11 "The ultimate interpretation of a statute is an exercise of the judicial power ... conferred
12 upon the courts by the Constitution and, in the absence of a constitutional provision, cannot be
13 exercised by any other body. [Citation.] Courts must, in short, independently judge the text of the
14 statute, taking into account and respecting the agency's interpretation of its meaning, of course,
15 whether embodied in a formal rule or less formal representation. Where the meaning and legal
16 effect of a statute is the issue, an agency's interpretation is one among several tools available to
17 the court. Depending on the context, it may be helpful, enlightening, even convincing. It may
18 sometimes be of little worth." *Id.*, 7-8.

19 In their opposition memorandum, Respondents' simply stack several boilerplate quotes
20 from non-applicable cases, with no analysis as to why the standards in those cases should apply
21 to this case. Resp'ts' P. & A. in Supp. of Opp'n to 1st Am. Pet. and Mot. for J. on Writ, 4:7-28.
22 Based on the facts of this case, the standard in Respondents' cited cases does not apply.

23 Here, Petitioner is challenging the Medical Board's interpretations of law – specifically
24 the California Evidence Code, section § 1040; and the California Public Records Act (Cal. Gov.
25 Code § 6250 et seq.). When a government agency makes determinations of law, especially
26 generally applicable law (i.e., not enabling legislation or agency-made quasi-legislation), the
27 courts afford a low level of deference to the agency's interpretations of law. *Yamaha*, 19 Cal. 4th
28 at 7.

Respondents have made no argument whatsoever for why they should receive a
deferential standard of review – perhaps because there is no good argument in support of this

1 position. Therefore, this court may appropriately independently judge the Medical Board’s
2 interpretations of law, because the facts of this case justify low deference to the Respondents.

3
4 **II. THE INFORMATION SOUGHT BY PETITIONER IS NOT SUBJECT TO A**
5 **BLANKET EXEMPTION; RATHER, IT IS SUBJECT TO DISCLOSURE UNDER**
6 **BOTH CPRA AND THE EVIDENCE CODE.**

7
8 **A. Respondents’ provide no valid basis for a blanket exemption under Cal. Gov.**
9 **Code § 6254, and thus the information that Petitioner seeks is disclosable.**

10 The Public Records Act, section 6254, sets forth various categories of documents that
11 government agencies *may* withhold (but not “must” withhold): “[T]his chapter **does not require**
12 the disclosure of any of the following records ... (f) Records of complaints to, or investigations
13 conducted by, or ... any investigatory or security files compiled by any other state or local
14 agency for ... licensing purposes.” [Emphasis added.]

15 Here, Respondents’ opposition brief quotes only the first sentence of subsection (f), while
16 conveniently omitting both the first and last paragraphs of the statute, which clearly set forth a
17 permissive nondisclosure regime, not a mandatory one. As the appellate court explained, “The
18 exemptions from disclosure provided by section 6254 are permissive, not mandatory; they permit
19 nondisclosure but do not prohibit disclosure. [Citation.] The permissive nature of section 6254’s
20 exemptions is clearly evidenced by its last paragraph which states: ‘Nothing in this section is to
21 be construed as preventing any agency from opening its records concerning the administration of
22 the agency to public inspection, unless disclosure is otherwise prohibited by law.’” *Register Div.*
23 *of Freedom Newspapers v. Cnty. of Orange*, 158 Cal. App. 3d 893, 905-06 (1984).

24 But here, Respondents simply conclude that “materials gathered in the course of an
25 investigation are exempt from disclosure” (Resp’ts’ Opp’n at 5:23), when in fact such materials
26 might – or might not – be exemptible, depending on the circumstances. Characteristically,
27 Respondents provide no factual analysis of the circumstances. Instead, they make only
28 conclusory assertions, based on fragmentary rule statements. Therefore, Respondents’ claim of
an “easy exemption” fails.

1 **B. Reports filed for the death of a patient (and the underlying information contained**
2 **in them) are not subject to an unqualified exemption under Cal. Gov. Code § 6254**
3 **or an absolute privilege under Cal. Evid. Code § 1040.**

4 No rule requires the non-disclosure of information filed under Cal. Bus. & Prof. Code §
5 2240 (Report for Death of Patient) and 16 C.C.R. 1356.4 (Outpatient Surgery--Reporting of
6 Death). No authority – executive, judicial or legislative – supports the classification of such
7 documents as “complaints to the board” – and thus exempt from disclosure under Cal. Gov.
8 Code § 6254(f).

9 From the outset, the Medical Board has claimed “[r]eports for the death of a patient **are**
10 **treated** as complaints to the Board, and will not be disclosed,” as the Medical Board’s staff
11 counsel Kerrie Webb wrote in her Feb. 20, 2015 letter to Petitioner. Am. Pet., Exh. 9. [Emphasis
12 added.] Since then, the Medical Board has not advanced its basis for withholding information
13 much further than that. Tellingly, whenever Respondents discuss exemptions, they use the
14 passive voice:

- 15 • “Such a report *is treated* as a ‘complaint’ for an investigation by the Board. Resp’ts’
16 Opp’n at 7:5-6. [Emphasis added.]
- 17 • “This is an investigatory document, and the Board’s assertion that Outpatient Reports
18 of Death *are exempt* from disclosure is correct.” *Id.* at 7:11-12. [Emphasis added.]

19 Respondents cite no case law, no executive opinion and no legislation supporting the
20 “correctness” of its position. The only supporting “authority” Respondents put forth is a
21 declaration from a staff services manager, who states, “A report under section 2240, subdivision
22 (a), *is deemed* a ‘complaint’ by the Board.” Resp’ts’ Opp’n, Exh. A, 2:17-18. [Emphasis added.]
23 Again, the staff services manager speaks in the passive, and cites no legal authority. Apparently,
24 the information Petitioner seeks is only “exempt” from disclosure simply because Respondents
25 say it is, and for no other reason. Respondents’ self-serving “treatments” of law should therefore
26 be rejected.

27 **B2. The underlying information that would otherwise be contained in Cal. Bus. &**
28 **Prof. Code § 2240 and 16 C.C.R. 1356.4 is not subject to an unqualified exemption**
 under Cal. Gov. Code § 6254 or an absolute privilege under Cal. Evid. Code § 1040.

1 Title 16 of the California Code of Regulations (16 CCR 1356.4) sets forth the elements of
2 what must be included in a Report for the Death of a Patient (Cal. Bus. & Prof. Code § 2240),
3 including, most critically, “the circumstances of the patient’s death.” Presumably, this portion of
4 the report would include more than, “Patient was treated; situations arose, and patient’s heart
5 stopped.”

6 In its opposition memorandum, Respondents deny the existence of the report(s) Petitioner
7 requested. Resp’ts’ Opp’n at 7:19. Respondents similarly denied the existence of such reports in
8 its demurrer. Resp’ts’ P. & A. in Supp. of Dem. to 1st Am. Pet. at 7:5. Respondents have never
9 explained why it is that they would deny the disclosure of non-existent documents, as
10 Respondent Webb did in her Feb. 20, 2015, letter to Petitioner. Am. Pet., Exh. 9. Mistakes were
11 made, perhaps.

12 At this point, whether or not these particular reports exist is irrelevant; it is **the**
13 **underlying information** that counts.¹ Respondents do not deny possession of the underlying
14 information that would be contained in the reports requested by Petitioner, including but not
15 limited to “the circumstances of the patient’s death.” 16 C.C.R. 1356.4(c). Indeed, if
16 Respondents did conduct an investigation into Dr. James Matchison’s treatment of Petitioner’s
17 mother, as they claim, then they certainly should have garnered information as to the
18 circumstances of Audrey Murray’s death.

19 Therefore, the underlying information that would otherwise be contained reports filed
20 pursuant to Cal. Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4 should be released to
21 Petitioner, in addition to all other information in its possession regarding Audrey B. Murray’s
22 medical condition, treatment and death. Such information is privileged to Petitioner, as the
23 beneficiary of his mother, **not** the Respondents.

24 ¹ In the context of police investigations, Cal. Gov. Code § 6254(f)(1)-(3) makes this critical
25 distinction between specific records and the underlying information contained within them. These sub-
26 sections of § 6254(f) require law enforcement agencies to release certain information contained within
27 otherwise exempt reports. See *Rackauckas v. Super. Ct.*, 104 Cal. App. 4th 169, 174 n.3, (2002):
28 “Subdivision (f) does require disclosure of certain information derived from the arrest and other
investigative records, but not the records themselves.” Also see *Williams v. Super. Ct.*, 5 Cal. 4th 337, 348
(1993), which describes § 6254(f) as “designed to provide access to information contained in law
enforcement investigatory records without, however, requiring disclosure of the records themselves.”

1 **C. Respondents repeatedly stonewalled Petitioner’s requests for information,**
2 **exhausting all administrative remedies and making this claim ripe for review.**

3 In overruling Respondents’ demurrer, this court considered Respondents’ various
4 arguments and defenses pertaining to ripeness, finality and exhaustion of administrative
5 remedies. As the court concluded, “The FAP pleads facts showing that the first cause of action is
6 ripe and petitioner exhausted administrative remedies.” Decision on Dem. at 3.

7 Now, it appears, Respondents want to take a “second bite at the apple” on the issues of
8 ripeness and exhaustion of administrative remedies. In a breathtaking stretch of reason,
9 Respondents claim that because Petitioner specifically requested reports filed pursuant to Cal.
10 Bus. & Prof. Code § 2240 and 16 C.C.R. 1356.4, “and nothing more,” that somehow Petitioner
11 never requested information regarding the cause and circumstances of his mother’s death, as he
12 is now. Resp’ts’ Opp’n at 7:5. As an informal fallacy, this argument assumes form over
13 substance – as if Petitioner requested only a form, and not the underlying information contained
14 in the form, i.e., “the circumstances of the patient’s death.” 16 CCR 1356.4.

15 Stretching it even further, Respondents assert, “Petitioner cannot contend that the Board
16 erroneously withheld this information from him after a CRA request because Petitioner did not
17 seek this information. Respondents did not have an opportunity to evaluate and respond to such a
18 request.” *Id.* at 8:8-11. This statement flies in the face of almost every communication Petitioner
19 had with Respondents, going back to his initial complaint to the Board:

20 “I am writing to ask your assistance regarding the death of my mother,
21 Audrey B. Murray, who died last June about 30 hours following an elective heart
22 procedure. The doctor, James C. Matchison, either can’t or won’t tell me what
23 caused her death ... Dr. Matchison lost a patient – my mother – and if he does not
24 know what caused her death, he really should if he is to continue operating on
25 patients.” Am. Pet. Exh. 1.

26 From day 1, Respondents knew exactly what type of information Petitioner was looking
27 for; they had every opportunity to evaluate his requests for information; and they had every
28 opportunity to respond. Instead, they stonewalled. Now they spin spurious arguments.

 Respondents’ “second bite” at the apple must fail. Petitioner has exhausted his
administrative remedies, and his claim is ripe.

1 **C2. Petitioner has properly requested non-exempt and non-privileged information,**
2 **or information that is privileged to him, as the beneficiary of his mother.**

3 Petitioner’s prayer for relief in his Amended Petition begins by asking the court to
4 compel the Medical Board to release “all information, reports and statements acquired by the
5 Medical Board regarding Audrey B. Murray’s medical condition, treatment and death.” Am. Pet.
6 at 15. The prayer then proceeds to filter out information that is “legitimately and lawfully
7 privileged to someone other than Audrey B. Murray or her beneficiaries, or appropriately
8 requires redaction or in camera inspection.” *Id.*

9 In its opposition brief, Respondents claim that Petitioner is making an unqualified request
10 for “the entire investigative file resulting from his complaint to the Board regarding the care and
11 treatment of Mrs. Murray by Dr. Matchison.” Resp’ts’ Opp’n at 8:7-8. Petitioner made no such
12 unqualified request. Respondents assume facts and statements not supported by the record, then
13 strike them down in a “straw man” argument. Respondents’ argument disregards both the
14 structure and substance of the Amended Petition. Accordingly, the court should disregard
15 Respondents’ fallacious arguments.

16 **III. THE INFORMATION SOUGHT BY PETITIONER IS SUBJECT TO THE**
17 **BALANCING TEST FOR A QUALIFIED PRIVILEGE UNDER CAL. EVID.**
18 **CODE § 1040(b)(2), BECAUSE RESPONDENTS ARE NOT ENTITLED TO AN**
19 **ABSOLUTE PRIVILEGE.**

20 **(A) Ripeness and Exhaustion**

21 See II(C) above.

22
23 **(B) The information Petitioner seeks is not subject to any kind of blanket exemption**
24 **under Cal. Gov. Code § 6254(f), and therefore it is proper to weigh this information**
25 **under the qualified privilege of Cal. Evid. Code § 1040(b)(2).**

26 California Government Code § 6254, subdivision (f), addresses information gathered by
27 state agencies for licensing purposes. Various subsections of the statute then hone in on specific
28 categories of information compiled by police agencies, specifying which information shall be
 released notwithstanding the exemption.

1 As the Court explained, “It is clear that the exemption is not literally ‘absolute.’ In the
2 first place, subdivision (f), itself, requires the disclosure of certain specified information. In the
3 second place, section 6259 expressly authorizes the superior court, upon a sufficient showing, to
4 examine records in camera to determine whether they are being improperly withheld.” *Williams*
5 *v. Super. Ct.*, 5 Cal. 4th 337, 346-47 (1993).

6 In its opposition brief, Respondents attempt to assign themselves an absolute exemption,
7 and here they do so by inappropriately invoking the police-specific subdivisions of § 6254(f)(1)-
8 (3). Resp’ts’ Opp’n at 10:6-8. But if Respondents looked at these sub-sections more closely, they
9 would see that even the police do not get an absolute exemption. Therefore, because the
10 information Petitioner seeks is not absolutely exempt, it is subject to the balancing test of Cal.
11 Evid. Code § 1040(b)(2).

12 **C. The interests of justice weigh strongly in favor of releasing information sought by**
13 **Petitioner because the issue concerns life and death, and Petitioner has no alternate**
14 **means of obtaining any explanation for his mother’s death.**

15 The qualified privilege of Cal. Evid. Code § 1040(b)(2) sets out a balancing test, in which
16 the court inquires whether “[d]isclosure of the information is against the public interest because
17 there is a necessity for preserving the confidentiality of the information that outweighs the
18 necessity for disclosure in the interest of justice.” *Id.* Moreover, “[i]n determining whether
19 disclosure of the information is against the public interest, the interest of the public entity as a
20 party in the outcome of the proceeding may not be considered.” *Id.*

21 In weighing the public interest under § 1040(b)(2), when a death is involved, the court
22 favors releasing information to citizens and individuals, rather than granting secrecy to public
23 agencies and public officials. *Shepherd v. Super. Court*, 17 Cal. 3d 107, 130 (1976); *Michael P.*
24 *v. Super. Court*, 92 Cal. App. 4th 1036, 1048 (2001); *Dominguez v. Super. Court of L.A. Cnty.*,
101 Cal. App. 3d 6 (1980).

25 The best Respondents can do to counter this clear pattern is to point out that the Petitioner
26 in this action is not a plaintiff in an action for damages, unlike the parties in the cases he cites.
27 Resp’ts’ Opp’n at 12:13. But then, Respondents cite no case in which a death is involved, and
28 then a survivor seeks information from a public agency, is denied, and then pursues a writ of
mandate. It appears that there is no such case on record. Therefore, it is appropriate to employ

1 analogical reasoning to the most similar cases available, as Petitioner has done. Based on the
2 pattern in the cases cited, the courts clearly favor disclosure over secrecy.

3 In weighing what it considers the public interest against disclosure, Respondents present
4 a parade of horrors: Disclosure of the type of information Petitioner seeks would have a
5 “chilling effect” on future investigations; doctors might refuse to cooperate; hospitals would be
6 less likely to provide the Board with information; members of the public would be afraid to
7 supply the Board with information “if their identities are public”; and patients, too, would shy
8 away. Resp’ts’ Opp’n at 12:22-28. Consequently, the Board would “not [be] able to fully assess
9 the full scope of the care and treatment of patients, as well as the circumstances surrounding
10 possible violations of the laws governing the practice of medicine.” *Id.* What Respondents’
11 syllogism really amounts to is the old bureaucratic saw, “If I have to do this for you, then I have
12 to do it for everyone,” i.e., they might actually have to lift a finger.

13 In assessing what it considers to be the Petitioner’s interest in disclosure, Respondents
14 fire off a “parade of dismissals”: If Petitioner really wants to get serious about getting some
15 information, go be a “litigant” (like the Plaintiffs in *Shepherd, Michael P, and Dominguez*); go
16 get “Mrs. Murray’s medical records and obtain[] an opinion as to the cause of her death.” *Id.* at
17 12:12-18. In other words, go away.

18 Respondents close out their argument against disclosure by considering the interests of
19 doctors: “A licensee would also face embarrassment and damage to his reputation through
20 disclosure of a complaint, materials gathered in investigation and the accompanying opinions
21 and analysis of the complaint, even when no violations of the law has been found.” *Id.*, at 13:11-
22 13. What Respondents fail to explain: How is an investigation that determines that a doctor has
23 performed according to the standard of care, has not breached his duty, has not caused harm –
24 how could this possibly be “embarrassing” or “damaging to his reputation”? The reasoning
25 doesn’t follow.

26 It is worthy of note that the Medical Board routinely releases information related to
27 complaints and investigations when disciplinary and enforcement action is taken, according to
28 the requirements of Cal. Bus. & Prof. Code § 803.1(a) and § 2227(b). What about all of the
possible chilling effects there? The potential of private patient information being disclosed? The
embarrassment to doctors? Inducement, innuendo and colloquium? Apparently, the Medical

1 Board has a way of dealing with these potential problems. And it could certainly reasonably deal
2 with Petitioner's request here.

3
4 **D. The public interest is served by disclosing the records Petitioner seeks.**

5 The results of the balancing test are the same under Cal. Gov. Code § 6255 as under Cal.
6 Evid. Code § 1040: Respondents have not justified withholding the records Petitioner seeks, and
7 the public interest is best served by disclosure.

8 **IV. RESPONDENTS HAD A DUTY TO ASSIST PETITIONER AND TO**
9 **IDENTIFY ANY SEGREGABLE PORTIONS OF THE RECORDS HE SOUGHT.**

10 The California Public Records Act (CPRA) states, "Any reasonably segregable portion of
11 a record **shall** be available for inspection by any person requesting the record after deletion of the
12 portions that are exempted by law." Cal. Gov. Code § 6253. [Emphasis added.] Additionally,
13 Cal. Gov. Code § 6253.1 states that a public agency "**shall** ... (1) [a]ssist the member of the
14 public to identify records and information that are responsive to the request or to the purpose of
15 the request, if stated ... [and] (3) [p]rovide suggestions for overcoming any practical basis for
16 denying access to the records or information sought." Cal. Gov. Code § 6253.1(a).

17 In their opposition brief, Respondents reason that because documents requested by
18 Petitioner do not exist, Respondents had nothing to segregate. The trouble with this reasoning is,
19 when Respondents considered Petitioner's request for these records, they rejected his request –
20 as if the records existed. If at that time Respondents had made the slightest effort to assist
21 Petitioner in any way, as § 6253 requires, perhaps they would have discovered the existence/non-
22 existence of these particular documents, and then the parties could have proceeded to the next
23 step in identifying the information sought by Petitioner.

24 Thus, in assessing Respondents' duties under § 6253 and § 6253.1, Respondents must be
25 estopped from denying the existence of individual records in order to escape responsibility.
26 Respondents have not denied possession of the information Petitioner seeks, regardless of the
27 particular title of any document containing this information, and Respondents must provide this
28 information accordingly.

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 CITY AND COUNTY OF LOS ANGELES
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11 **BRUCE THOMAS MURRAY,**

12 Petitioner,

13 v.

14 **MEDICAL BOARD OF CALIFORNIA, *et***
15 ***al.*,**

16 Respondents.
17

Case No. BS158575

[PROPOSED]

**JUDGMENT DENYING PETITION FOR
WRIT OF MANDATE**

Trial Date: January 17, 2016

Dept: 82

Judge: Hon. Mary H. Stroble

Action Filed: October 5, 2015

18 The Petition for Writ of Mandate of Petitioner, Bruce Thomas Murray, came on regularly
19 for hearing before the Honorable Mary H. Stroble, on January 17, 2016. Petitioner appeared on
20 his own behalf. Appearing on behalf of Respondents Medical Board of California, Kimberly
21 Kirchmeyer, Executive Director of the Medical Board of California, and Kerrie D. Webb, Staff
22 Counsel, Medical Board of California (hereinafter the "Board" or "Respondents"), was Kathleen
23 A. Kenealy, Acting Attorney General, by Peggie Bradford Tarwater, Deputy Attorney General.

24 Having reviewed and considered the pleadings and documents on file in this action, having
25 heard oral argument, and having taken the matter under submission, this Court hereby denies the
26 petition for writ of mandate, as set forth in its Minute Order re Hearing on Petition for Writ of
27 Mandate, which is attached hereto and incorporated herein.
28

1 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

2 1. The Petition for Writ of Mandate filed in this action is denied.

3 2. Petitioner is not entitled to fees and costs, pursuant to Government Code section
4 6259, subdivision (d).

5 Dated: _____, 2017.

6 HON. MARY H. STROBEL
7 Judge of the Superior Court

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/17/17

DEPT. 82

HONORABLE MARY H. STROBEL

JUDGE

N. DIGIAMBATTISTA

DEPUTY CLERK

HONORABLE
10

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. HALL C/A

Deputy Sheriff

B. JAMES CSR# 9296

Reporter

9:30 am

BS158575

Plaintiff

Counsel

IN PRO PER (x)

BRUCE THOMAS MURRAY

VS

Defendant

Counsel

PEGGIE B. TARWATER (X)

MEDICAL BOARD OF CALIFORNIA ET

NATURE OF PROCEEDINGS:

HEARING ON PETITION FOR WRIT OF MANDATE

Matter comes on for hearing and is argued.

The court adopts its tentative ruling as the order of the court and is set forth in this minute order.

Petitioner Bruce Thomas Murray ("Petitioner") seeks a writ of mandate compelling Respondents Medical Board of California; Kimberly Kirchmeyer, Executive Director of the Medical Board of California; and Kerrie D. Webb, Staff Counsel of the Medical Board of California ("Respondents") to produce, pursuant to the California Public Record Acts, all information, reports, and statements acquired by the Medical Board regarding the medical condition, treatment, and death of Audrey B. Murray, Petitioner's mother.

Statement of the Case

According to the first amended petition, Petitioner is the son and beneficiary of Audrey Bevan Murray, who died on June 5, 2013. (First Amended Petition (FAP) "The Parties" ¶ 1.) Petitioner alleges that at approximately 8 a.m., June 4, 2013, Dr. James C. Matchison performed a cardiac catheterization procedure on Audrey Murray. (Id. "Facts" ¶ 1.) Due to complications, the

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NATURE OF PROCEEDINGS:

procedure was aborted. (Id. ¶ 2.) At approximately 10 a.m., June 4, 2013, Audrey Murray was admitted to the Torrance Memorial Medical Center Progressive Care Unit for post-procedure recovery. (Id. ¶ 3.) She was discharged at 11:30 on June 5, 2013, but was transported back to Torrance Memorial that same day at 3:30 pm for emergency treatment and died shortly thereafter. (Id. ¶¶ 6-7.)

On May 15, 2014, Petitioner filed a complaint with the Medical Board, seeking an explanation and cause for his mother's death. (FAP ¶ 9, Exh. 1.) Petitioner complained that Dr. Matchison "either can't or won't tell me what caused her death." (Ibid.) The personal representative of Mrs. Murray provided the Board with authorizations for the release to the Board of medical records. (Id. Exh. 2c-2d.)

On October 10, 2014, Petitioner requested from Linda Serrano, an enforcement analyst handling Petitioner's complaint against Dr. Matchison, a copy of Dr. Matchison's "Report for Death of Patient" / "Outpatient Surgery - Reporting of Death" for Mrs. Murray pursuant to Business and Professions Code section 2240 and California Code of Regulations title 16, section 1356.4. (FAP Exh. 4.) Petitioner reiterated that request on December 15, 2014 and January 21, 2015. (Id. Exh. 5-7.) Petitioner stated that he was trying to obtain "copies of the forms

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Dr. Matchison was statutorily required to file with the Medical Board when my Mom died under his care. These forms are Cal Bus & Prof Code § 2240 --- Report for Death of Patient; and 16 CCR § 1356.4 - Outpatient Surgery-Reporting of Death." (Ibid.) On January 21, 2015, Serrano stated in an email "we do not provide copies of those reports." (Id. Exh. 7.)

On February 10, 2015, Petitioner sent to Kerrie Webb, Esq., staff counsel for the Medical Board, a formal CPRA request for the following documents: (1) the Report of Death of Patient pursuant to Business and Professions Code section 2240; and (2) the Outpatient Surgery-Reporting of Death pursuant to California Code of Regulations title 16, section 1356.4. (FAP Exh. 8.) Petitioner stated: "As the son and beneficiary of my mother, I am entitled and authorized to receive any otherwise privileged and confidential information under Cal Bus & Prof Code §2225(c)(2)." (Ibid.)

On February 20, 2015, attorney Kerrie Webb of the Medical Board responded to Petitioner's document request, stating:

Unfortunately, the Medical Board of California (Board) is unable to comply with your request. Records of complaints to, and investigations conducted by, state licensing agencies are not subject to disclosure

MINUTES ENTERED 01/17/17 COUNTY CLERK
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MEDICAL BOARD OF CALIFORNIA ET

NATURE OF PROCEEDINGS:

pursuant to Government Code section 6254(f).
In addition, records of complaints and
investigations of state licensing agencies
are privileged under Evidence Code section
1040. Reports for death of a patient are
treated as complaints to the Board, and will
not
be disclosed.

Please feel free to contact me if you have any
further questions. (FAP Exh. 9.)

On April 14, 2015, the Board, through Associate
Enforcement Analyst Linda Serrano, advised
Petitioner that it had completed its review of his
complaint against Dr. Matchison. The Board stated
that "it was the opinion of our consultant that the
treatment rendered did not constitute a violation of
the law as it relates to the practice of medicine."
The Board therefore closed the case. (FAP Exh. 10.)

Procedural History

On October 5, 2015, Petitioner filed a petition for
writ of mandate.

On November 23, 2015, Respondents filed a demurrer
to the petition.

On January 7, 2016, before a ruling on the demurrer,

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MEDICAL BOARD OF CALIFORNIA ET

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Petitioner filed a first amended petition.

On May 3, 2016, the court overruled Respondents' demurrer to the amended petition.

On December 19, 2016, Respondents' filed an answer.

The court has received Petitioner's opening brief in support of the petition, Respondents' opposition, and Petitioner's reply.

Standard of Review

There are two essential requirements to the issuance of an ordinary writ of mandate under Code of Civil Procedure section 1085: (1) a clear, present and ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty. (California Ass'n for Health Services at Home v. Department of Health Services (2007) 148 Cal.App.4th 696, 704.) "In general, when review is sought by means of ordinary mandate the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support." (Bunnett, supra at 849.)

Pursuant to the CPRA (Gov. Code § 6250, et seq.), individual citizens have a right to access government records. In enacting the CPRA, the

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California Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code, § 6250; see also County of Los Angeles v. Superior Court (2012) 211 Cal.App.4th 57, 63.) To facilitate the public's access to this information, the CPRA mandates, in part, that:

[E]ach state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available . . . (Gov. Code § 6253(b).)

The CPRA defines "public records" submit to its provisions as follows:

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975. (Gov. Code § 6252(e).)

While the CPRA provides express exemptions to its disclosure requirements, these exemptions must be

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Reporter

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MEDICAL BOARD OF CALIFORNIA ET Counsel PEGGIE B. TARWATER (X)

NATURE OF PROCEEDINGS:

narrowly construed and the agency bears the burden of showing that a specific exemption applies. (Sacramento County Employees' Retirement System v. Superior Court (2013) 195 Cal.App.4th 440, 453.)

"Where ... purely legal issues involve the interpretation of a statute an administrative agency is responsible for enforcing, [the court] exercise[s] [its] independent judgment, 'taking into account and respecting the agency's interpretation of its meaning.'" (Housing Partners I, Inc. v. Duncan (2012) 206 Cal.App.4th 1335, 1343; see also Yamaha Corp. of America v. State Bd. Of Equalization (1998) 19 Cal.4th 1, 11.)

Analysis

First Cause of Action - Denial of Request under Gov. Code § 6254

In the first cause of action, Petitioner alleges that Respondents abused their discretion in denying his CPRA request for a Report of Death of Patient pursuant to Business and Professions Code section 2240(a). Petitioner specifically challenges the Board's assertion that the report of death is a complaint exempt from disclosure under Government Code section 6254(f).

Documents Requested in Petitioner's CPRA Requests

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MEDICAL BOARD OF CALIFORNIA ET

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Petitioner requested the following records from the Medical Board: (1) the Report of Death of Patient pursuant to Business and Professions Code section 2240; and (2) the Outpatient Surgery-Reporting of Death pursuant to California Code of Regulations title 16, section 1356.4. (FAP Exh. 4-8.)

Business and Professions Code section 2240(a) provides: "A physician and surgeon who performs a medical procedure outside of a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, that results in the death of any patient on whom that medical treatment was performed by the physician and surgeon, or by a person acting under the physician and surgeon's orders or supervision, shall report, in writing on a form prescribed by the board, that occurrence to the board within 15 days after the occurrence."

California Code of Regulations, Title 16, section 1356.4, titled "Outpatient Surgery - Reporting of Death," sets forth the information required in the reporting of a patient death pursuant to Business and Professions Code section 2240(a). 1

In support of the opposition brief, Respondents submit the declaration of Ramona Carrasco, a Staff Services Manager with the Medical Board whose duties

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MEDICAL BOARD OF CALIFORNIA ET

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include "supervising and directing the activities of Central Complaint Unit staff in the intake and review of complaints received by the Board to determine whether there has been a violation of the statutes and regulations governing healing arts licensees." Carrasco shows familiarity with the Board's process for handling reports mandated by Business and Professions Code section 2240(a). (Carrasco Decl. ¶¶ 1-3.)

Carrasco declares that she has searched the Board's database and determined that there is no record of receipt of a report pursuant to section 2240(a) relating to the death of Mrs. Murray filed by or on behalf of Dr. James C. Matchison. She declares that she is familiar with a complaint received by the Board relating to the care and treatment of Mrs. Murray by Dr. Matchison. She declares that she has reviewed all materials received by the Board relating to this complaint and that "no reports of death, as set forth in Business and Professions Code section 2240, are contained within the materials." (Carrasco Decl. ¶¶ 4-5.) The foregoing evidence, which has not been rebutted (see Reply 4), is sufficient to establish that the Medical Board does not have possession of a Report of Death submitted pursuant to section 2240(a) or regulation 1356.4.

Petitioner's own allegations support this conclusion. A report of death is required under

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section 2240(a) when a physician performs a medical procedure "outside of a general acute care hospital ... that results in the death of any patient on whom that medical treatment was performed ." Regulation 1356.4, titled "Outpatient Surgery-Reporting of Death," requires the physician to report, inter alia, "the name and address of the outpatient setting where the surgery was performed" and the "the full name of each entity which licenses, certifies or accredits the outpatient setting where the surgery was performed and the types of outpatient procedures performed at that setting." Petitioner does not specifically allege or submit evidence that Mrs. Murray underwent surgery in an outpatient setting. Although the amended petition does not clearly specify where the surgery occurred, it is most reasonably interpreted to allege that the surgery occurred at Torrance Memorial Medical Center. (FAP p. 3.) Record releases were provided by Mrs. Murray's representative for that facility. (Id. Exh. 2c-2d.) Petitioner alleges that after surgery, Mrs. Murray was transferred to the hospital's Progressive Care Unit for recovery, not that Mrs. Murray was transferred from an outpatient setting. (FAP p. 3.) Petitioner, who has the burden of proof, fails to submit any evidence that the surgery at issue occurred at an outpatient setting. Therefore, Petitioner fails to show that the Medical Board would have within its possession a report under section 2240(a).

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Petitioner correctly points out that Kerrie Webb, Senior Staff Counsel for Medical Board, did not inform Petitioner in her February 20, 2015 letter that a section 2240(a) report for Mrs. Murray did not exist. (FAP Exh. 9; see Reply 4.) Rather, Webb denied the CPRA request based on an exemption, as if the report existed. (Id. Exh. 9.) If the report did not exist, there was no reason for Webb to claim that the report was exempt. As stated by Petitioner, perhaps "mistakes were made." (Reply 4.) In any event, Webb's response is not sufficient evidence that the requested report under section 2240(a) actually exists or is in the Board's possession.

In the alternative to their argument that the report does not exist, Respondents assert that outpatient reports of death are exempt from disclosure as a complaint for an investigation by the Board. (Oppo. 5-8.) "California courts will decide only justiciable controversies. The concept of justiciability is a tenet of common law jurisprudence and embodies '[t]he principle that courts will not entertain an action which is not founded on an actual controversy....'" (Wilson & Wilson v. City Council of Redwood City (2011) 191 Cal.App.4th 1559, 1573.) "The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief." (Ibid.) Here, the court cannot grant any

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NATURE OF PROCEEDINGS:

effective relief with respect to the documents requested, as they do not exist. Neither party shows grounds for the court to exercise its discretion to decide a moot case. (Santa Monica Baykeeper v. City of Malibu (2011) 193 Cal.App.4th 1538, 1548.) Courts generally do not issue advisory opinions. (People ex ref. Lynch v. Superior Court (1970) 1 Cal.3d 910, 912.)

Information and Documents Not Requested in Petitioner's CPRA Requests

In his amended petition, Petitioner requests, inter alia, "all information, reports and statements acquired by the Medical Board regarding Audrey B. Murray's medical condition, treatment and death"; "all documents contained in MBC file number 800 2014 005263" containing information about Mrs. Murray's death; and all statements made by Dr. Matchison and third parties regarding Mrs. Murray's death. To the extent this information is privileged, Petitioner requested that the Board produce a privilege log. (FAP p. 15.)

In opposition, Respondents contend that Petitioner did not exhaust his administrative remedies with respect to this information and documents. 2 In the alternative, Respondents contend that the Board's investigative file is exempt from disclosure under Government Code section 6254(f) and (k),

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NATURE OF PROCEEDINGS:

section 6255, and Evidence Code section 1040. (Oppo. 8-14.)

Exhaustion of administrative remedies is "a jurisdictional prerequisite to judicial review." (Cal. Water Impact Network v. Newhall County Water Dist. (2008) 161 Cal.App.4th 1464, 1489.) "The principal purposes of exhaustion requirements include avoidance of premature interruption of administrative processes, allowing an agency to develop the necessary factual background of the case, letting the agency apply its expertise and exercise its statutory discretion, and administrative efficiency and judicial economy." (Ibid.)

To facilitate the public's access to this information, the CPRA mandates, in part, that: "[E]ach state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available...." (Gov. Code § 6253(b).)

The CPRA further provides as follows: "Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify

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the person making the request of the determination and the reasons therefor." (Gov. Code § 6253(c).)

Here, Petitioner's communications with Respondents described only (1) the Report of Death of Patient pursuant to Business and Professions Code section 2240; and (2) the Outpatient Surgery-Reporting of Death pursuant to California Code of Regulations title 16, section 1356.4. 3 (FAP Exh. 4-8.) Liberally construing Petitioner's CPRA requests in favor of Petitioner, the court cannot conclude that Petitioner requested any other records or information regarding Mrs. Murray's medical condition, treatment and death; other documents from the complaint file regarding her death; or statements by Dr. Matchison or third parties. (FAP Exh. 1, 4-8.)

In reply, Petitioner argues that Respondents elevate form over substance in contending that he failed to exhaust administrative remedies. He admits that he only specifically requested the Outpatient Report of Death, but contends that his communications should have been interpreted to request the "underlying information" contained in the form, such as the "circumstances of the patient's death." (Reply 5.) Although Petitioner does not cite authorities on point, the court notes case law suggesting that the agency must consider the information that is being requested, not only the precise types of records.

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NATURE OF PROCEEDINGS:

(Fredericks v. Sup. Ct. (2015) 233 Cal.App.4th 209, 217.) On the other hand, "a person who seeks public records must present a reasonably focused and specific request, so that the public agency will have an opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies." (Ibid.)

Petitioner's reply arguments about exhaustion fail for several reasons. Because an Outpatient Report of Death does not exist for Mrs. Murray, there is no "underlying information" from that report. It is true that regulation 1356.4 requires disclosure of "(c) The date of the surgery; the name and address of the outpatient setting where the surgery was performed; and the circumstances of the patient's death." That regulation, titled "Outpatient Surgery - Reporting of Death," only applies where the patient undergoes surgery in an outpatient setting. As discussed, Petitioner submits no evidence that Mrs. Murray's surgery occurred in an outpatient setting.

To the extent Petitioner requests information about the circumstances of Mrs. Murray's death or statements made by Dr. Matchison that would be included in other records in Board's possession, Petitioner did not reasonably describe such records or the information he now requests. (See FAP Exh. 1, 4-8.) While the agency must consider the

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DATE: 01/17/17

DEPT. 82

HONORABLE MARY H. STROBEL

JUDGE

N. DIGIAMBATTISTA

DEPUTY CLERK

HONORABLE
10

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

B. HALL C/A

Deputy Sheriff

B. JAMES CSR# 9296

Reporter

9:30 am

BS158575

Plaintiff

Counsel

IN PRO PER (x)

BRUCE THOMAS MURRAY

VS

Defendant

Counsel

PEGGIE B. TARWATER (X)

MEDICAL BOARD OF CALIFORNIA ET

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information requested, and not only the precise records identified, Petitioner's CPRA requests did not reasonably inform the agency that he was seeking other information. The request for documents is quite focused and specific - it did not seek information generally regarding the cause of death of Petitioner's mother. "I hereby request copies of the following documents . . . Cal. Bus & Prof Code § 2240 - Report for Death of Patient; 16 CCR § 1356.4 - Outpatient Surgery- Reporting of Death." (FAP, Exh. 8) Therefore, the court concludes that Petitioner has not exhausted his administrative remedies with respect to the other information requested in his petition.

In reply, Petitioner quotes at length from his May 15, 2014 letter to the Board. This letter is a complaint about Dr. Matchison, not a CPRA request for information. This is shown by the Board's response dated May 23, 2014, and that Mrs. Murray's representative submitted an authorization for release of medical records, as requested by the Board as part of the complaint process. (FAP Exh. 1-2b.) Moreover, Petitioner did not make reasonably focused request for documents or information in this letter.

Given the breadth of information requested by Petitioner in his writ petition that was not included in his CPRA requests, it would be

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MEDICAL BOARD OF CALIFORNIA ET

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NATURE OF PROCEEDINGS:

beneficial to administrative efficiency and judicial economy for the Medical Board to address Petitioner's CPRA requests for additional records/information about Mrs. Murray's death in the first instance.

The first cause of action is DENIED.

Second Cause of Action - Application of Evid. Code § 1040

In his second cause of action, Petitioner contends that Respondents abused their discretion in denying his CPRA request based on exemptions contained in Government Code section 6254(k) and Evidence Code section 1040. To the extent Petitioner seeks the Outpatient Report of Death in this cause of action or information from that report, his claim is moot because the undisputed evidence shows that this document does not exist for Mrs. Murray.

Both parties brief the court on their legal positions on whether the Outpatient Report of Death, if it existed, would be exempt from disclosure pursuant to the official information privilege under section 1040(b)(2). As stated, with respect to the Outpatient Report of Death, there is no justiciable controversy because the record does not exist with respect to Mrs. Murray. To the extent the parties make these arguments with respect to other

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MINUTES ENTERED 01/17/17 COUNTY CLERK
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DEPT. 82

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MEDICAL BOARD OF CALIFORNIA ET

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PEGGIE B. TARWATER (X)

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information about Mrs. Murray within the Medical Board's files, Petitioner did not make a CPRA request for such information/records and has not exhausted his administrative remedies.

The second cause of action is DENIED.

Third Cause of Action - Failure to Properly Respond under the CPRA

In his third cause of action, Petitioner alleges that Respondent Webb erroneously classified the information sought by Petitioner as exempt under section 6254(f). He also alleges that "by inappropriately applying a blanket privilege to all information sought by Petitioner, Respondent Webb failed to identify and release 'any reasonably segregable portion' of the records." (FAP p. 12.) Petitioner contends that Respondents violated Government Code section 6253.1. (Reply 9.)

Government Code section 6253.1 provides in relevant part:

(a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records,

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PEGGIE B. TARWATER (X)

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shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable effort to elicit additional clarifying information from the requester that will help identify the record or records. [¶]

(d) This section shall not apply to a request for public records if any of the following applies:

[¶] (2) The public agency determines that the request should be denied and bases that

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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determination solely on an exemption listed in Section 6254.

"Under Government Code section 6253.1, the [agency] has the duty to respond to requests for disclosure of the information in public records, including assisting the requester in formulating reasonable requests, because of the [agency's] superior knowledge about the contents of its records." (Community Youth Athletic Center v. City of National City (2013) 220 Cal.App.4th 1385, 1417.)

Here, as discussed above, Petitioner's CPRA requests were limited to (1) the Report of Death of Patient pursuant to Business and Professions Code section 2240; and (2) the Outpatient Surgery-Reporting of Death pursuant to California Code of Regulations title 16, section 1356.4. (FAP Exh. 4-8.) The evidence shows that these documents do not exist for Mrs. Murray. As stated above, while the agency must consider the information requested, and not only the precise records identified, Petitioner's CPRA requests did not reasonably inform the agency that he was seeking other information. Under these circumstances, Petitioner has not shown a violation of section 6253.1.

The third cause of action is DENIED.

Fourth and Fifth Causes of Action - Violations of Constitution and Public Policy

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The alleged constitutional and public policy violations at issue in the fourth and fifth causes of action are derivative of Petitioner's claims discussed above. For the reasons already stated, the fourth and fifth causes of action are DENIED.

Fees and Costs

Because Petitioner has not prevailed in this action, he is not entitled to fees and costs. (Gov. Code § 6259(d).)

Conclusion

The petition is DENIED.

- 1- Section 1356.4 states that the report shall include the following information: "(a) The patients' full name, address, date of birth, social security number, medical record number, and the physical location of the medical record. (b) The full name, license number, practice specialty and the American Board of Medical Specialties certification or certification by a board-approved specialty board, if any, of the physician who performed the surgery. (c) The date of the surgery; the name and address of the outpatient setting where the surgery was performed; and the circumstances of the patient's death. (d) The

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full name of each entity which licenses, certifies or accredits the outpatient setting where the surgery was performed and the types of outpatient procedures performed at that setting. (e) The name and address of the hospital or emergency center to which the patient was transferred or admitted. (f) The date of the report and the full name of the person who completed the report."

2- In the court's ruling on demurrer, the court only addressed the ripeness of Petitioner's CPRA request for the Outpatient Report of Death.

3- It appears these are actually the same document, i.e. the report required by section 2240(a).

Respondent is to give notice and to prepare, serve and lodge the proposed judgment within ten days. The court will hold the proposed judgment ten days for objections.

01/20/2017

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **BRUCE THOMAS MURRAY v. MEDICAL BOARD OF CALIFORNIA**
No.: **BS158575**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.


On January 27, 2017, I served the attached [PROPOSED] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

Bruce Thomas Murray
1931 E Street
San Diego, CA 92102

Petitioner In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 27, 2017, at Los Angeles, California.

S. Barshefski
Declarant


Signature

LA2015603438
62272960.doc

BRUCE T. MURRAY

1931 E Street ♦ San Diego, CA 92102 ♦ (619) 501-8556 ♦ murray@sagelaw.us

April 27, 2017

Kerrie Webb, Esq.
Staff Counsel
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Re: Request for records regarding the death of Audrey B. Murray, DOD June 5, 2013;
MBC control number 800 2014 005263

Dear Ms. Webb:

In accordance with the Information Practices Act¹ and all other applicable laws of this state, please provide me with all information in the Medical Board's possession regarding Audrey B. Murray's medical condition, treatment and the circumstances and cause(s) of her death.

I am the beneficiary of my mother, Audrey B. Murray,² and I represent myself as such here under the penalty of perjury. Accordingly, I am entitled to receive her personal, confidential and privileged information under Cal. Civ. Code § 1798.24 et seq., Cal. Bus. & Prof. Code § 2225(c)(1), Cal. Health & Saf. Code § 123105(e)(4), et al.

Such information includes, but is not limited to the following:

1. All information, reports and statements acquired by the Medical Board regarding Audrey B. Murray's medical condition, treatment and death.
2. All documents contained in MBC file number 800 2014 005263 that contain information regarding the cause and circumstances Audrey B. Murray's death.
3. All statements made to the Medical Board by Dr. James Matchison and any other third parties regarding Audrey B. Murray's medical condition, treatment and death.

Since the Medical Board has generated unique patient records "relating to the health history, diagnosis, or condition" of my mother (Cal. Health & Saf. Code § 123105), I consider the Medical Board to be a "health care provider" for the purposes of disclosure

¹ Please see in particular, "[E]ach agency shall permit any individual upon request and proper identification to inspect all the personal information in any record containing personal information and maintained by reference to an identifying particular assigned to the individual within 30 days of the agency's receipt of the request for active records." Cal. Civ. Code § 1798.34.

² Cal. Prob. Code § 24. Also see Los Angeles County Super. Ct., No. BS158575.

under Cal. Health & Saf. Code § 123110, i.e., “[A]ny patient representative shall be entitled to inspect patient records upon presenting to the health care provider of a patient.”

In addition to the private and privileged information that I am entitled to receive as a beneficiary, I also make this request for this information as a member of the public, under the California Public Records Act (Cal. Gov. Code § 6250 et seq.) Thus, if the Medical Board denies this request, or any portion of it, please also explain your basis for doing so under Cal. Gov. Code § 6255. Furthermore, if you deny this request under any of the other laws cited in this letter, please explain your basis for doing so under those laws.

Please note that this request should not be considered limited to the Information Practices Act, the Health & Safety Code, the California Public Records Act or the other laws cited here. Any other applicable state laws supporting this request should be considered to be invoked. Conversely, if the Medical Board denies any portion of this request, under any law or judicial decision, please cite to the applicable binding authority supporting your denial.

Finally, if any information in the documents that I seek is legitimately and lawfully privileged to someone other than Audrey B. Murray or her beneficiaries, or appropriately requires redaction, please produce the redacted document(s) and an accompanying privilege log that (1) expressly makes the claim (2) with specificity and particularity; (3) states on whose behalf the Medical Board is asserting the privilege, and (4) describes the nature of the documents, communications, or tangible things not produced or disclosed – and does so in a manner that, without revealing information itself privileged or protected, will enable me to assess the claim.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink that reads "Bruce Murray". The signature is written in a cursive style, with the first name "Bruce" and the last name "Murray" clearly legible. The signature ends with a large, stylized loop.



MEDICAL BOARD OF CALIFORNIA
Executive Office



May 26, 2017

Bruce T. Murray
1931 E Street
San Diego, CA 92102

RE: Your Request for Records Regarding Audrey B. Murray, Control No. 800 2014 005263

Dear Mr. Murray:

In a letter, dated April 27, 2017, and received by the Medical Board of California (Board) on May 1, 2017, you requested the following information, pursuant to the Information Practices Act, Civil Code section 1798.34, and the Public Records Act, Government Code section 6250:

1. All information, reports and statements acquired by the Medical Board regarding Audrey B. Murray's medical condition, treatment and death.
2. All documents contained in MBC file number 800 2014 005263 that contain information regarding the cause and circumstances of Audrey B. Murray's death.
3. All statements made to the Medical Board by Dr. James Matchison and any other third parties regarding Audrey B. Murray's medical condition, treatment and death.

Response to Request for Records, Category 1- All Information, Reports and Statements Acquired by the Medical Board Regarding Audrey B. Murray's Medical Condition, Treatment and Death

The Information Practices Act prohibits an agency from disclosing any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure falls within a particular category set forth in Civil Code section 1798.24. As relevant here, Civil Code section 1798.24, subdivision (g), provides that information may be produced pursuant to the California Public Records Act. The records sought in Category 1 are exempt from disclosure under the Public Records Act.

A. Investigative Information

The records described in Category 1 are investigative materials that are exempt from disclosure. Government Code section 6254, subdivision (f), exempts from disclosure records gathered during the course of an investigation as follows:

Exhibit 19

“Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, *or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.*” (Emphasis added.)

Subdivision (f) further provides that “nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusion of the investigating officer.”

The Board, as the physician’s and surgeon’s licensing agency, is authorized to investigate and to take action against its licensees for the purpose of public protection. The Board is tasked with investigating complaints, whether the complaints are from consumers or received by other means, such as through mandatory reporting. In addition, the Board is responsible for commencing disciplinary actions when warranted. (*See* Bus. & Prof. Code §§ 2001.1, 2004, 2220, 2220.5.) Investigative files created in the course of investigations are, therefore, exempt from disclosure.

Further, disclosure of information gathered during the course of the investigation would endanger the successful completion of investigations.

Investigative records do not lose their exempt status due to a failure to prosecute, or the close of an investigation. (*Dick Williams v. Superior Court* (1993) 5 Cal.4th 337, 354-355 [While there may be reasons of policy that would support a time limitation on the exemption for investigatory files, such a limitation is virtually impossible to reconcile with the language and history of subdivision (f).].)

B. Official and Privileged Information

The records requested in Category 1 consist of official information that is exempt from disclosure pursuant to Government Code section 6254, subdivision (k), and Evidence Code section 1040. It is obtained by the Board in the scope of its duties to investigate complaints to determine whether there has been a violation of the law and to determine whether disciplinary or other action is warranted. (*See* Bus. & Prof. Code §§ 2001.1, 2004, 2220, 2220.5.) Information obtained through the course of the investigation remains confidential unless and until disciplinary proceedings are initiated. (*See* Bus. & Prof. Code, § 2225, subd. (a).) Complaints, any explanatory statements by a physician, or offers of mitigating evidence are kept in confidence in a licensee’s central file. If no action is taken on a complaint or if the complaint is found to be without merit, the file is purged. (Bus. & Prof. Code § 800.)

Disclosing the requested information would have a chilling effect on the Board's ability to complete investigations and protect the public. The public interest in non-disclosure clearly outweighs the public interest in disclosure here. Licensees are not likely to provide explanatory information if such information becomes public. Without these explanations, the Board is not able fully to assess the full scope of the care and treatment of patients, as well as the circumstances surrounding possible violations of the laws governing the practice of medicine. Members of the public, health care institutions, and other possible complainants are less likely to provide the Board with information if their identities are public. "The prospect of public exposure discourages complaints and inhibits effective enforcement." (*City of San Jose v. Superior Court* (1999) 74 Cal.App. 4th 1008, 1020 (citations omitted).) Patients, too, are less likely to share confidential medical information for purposes of investigation with the risk that the information will be publicly shared. Further, requiring disclosure of investigative materials would not result in a disclosure to only those members of the public or to individuals by whom the information is sought. The information would potentially become available to the public at large. (*Id.*, at p. 1018.)

C. Public Interest

Government Code section 6255 "allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interests served by disclosure." (*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301,1321.) As stated above, the public interest in non-disclosure of the records gathered in the course of the Board's investigation outweighs the public interest in disclosure.

D. Deliberative Process

The deliberative process privilege exempts from disclosure materials that would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated or, if it is inextricably intertwined with policymaking processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.) Records that reveal deliberative processes are protected through application of Government Code section 6255. Here, records concerning the decision-making relating to the course of an investigation are covered by the deliberative process privilege and, therefore, absent special circumstances would be exempt from disclosure under Government Code section 6255.

E. Beneficiary Interest

You have indicated that, as a beneficiary, you are entitled to the personal information of Audrey Murray.

Civil Code section 1798.24, subdivision (c), allows disclosure of personal information to a "duly appointed guardian or conservator of the individual or a person representing the individual if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains." The Board is in possession of certified medical records relating to the care and treatment of Audrey Murray, which were obtained through releases executed by Ms. Murray's trustee, Peter Murray. At this time, the Board lacks sufficient documentation that the Board is authorized to release personal information to you, as opposed to Ms. Murray's trustee. Should such documentation be produced, the Board will evaluate the documentation to determine whether release of this personal information is permitted.

You have indicated that the Board is authorized to release information pursuant to Business and Professions Code section 2225, subdivision (c)(1). That section allows the Board to inspect medical records of a deceased patient without the authorization of a beneficiary or personal representative after making reasonable efforts to contact the beneficiary or personal representative and absent a refusal of consent. This section allows for the gathering of evidence in a confidential investigation, but does not allow the Board to disseminate that information.

You have also indicated that the Board is a health care provider and thus must permit inspection of records pursuant to Health and Safety Code section 123105 and 123110. The Board is not a health care provider, but rather a health care oversight agency charged with protecting the public through its licensing and disciplinary authority over physicians and surgeons. (Bus. & Prof. Code, §§ 2001.1, 2004, 2234.) As such, it may not disclose personal information without the presence of a condition provided in Civil Code section 1798.24, as set forth above.

F. Records Produced

Without waiving the above objections, the Board is providing to you, pursuant to your request the following information.

1. Complaint to the Board provided by you.
2. Correspondence between the Board and you relating to the obtaining of authorizations for release of medical information and the corresponding authorizations, correspondence between you and the Board re the progress and conclusion of the investigation.

G. Privilege Log

You have requested that the Board provide a privilege log as to those documents not produced by the Board. Under the Public Records Act, government agencies are not obligated to provide a privilege log or list of every record withheld along with a statutory justification for withholding. (*Haynie v Superior Court* (2001) 26 Cal.4th 1061, 1074.)

Response to Request for Records, Category 2 – All Documents Contained in MBC File Number 800 2014 005263 that Contain Information Regarding the Cause and Circumstances of Audrey B. Murray's Death

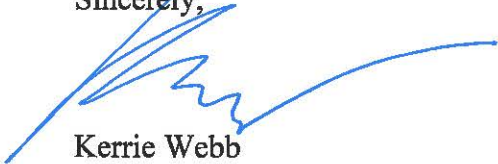
As to the request for records in Category 2, the Board responds by incorporating the same responses as those provided relating to Category 1.

Response to Request for Records, Category 3 – All Statements Made to the Medical Board by Dr. James Matchison and any other Third Parties Regarding Audrey B. Murray's Medical Condition, Treatment and Death

As to the request for records in Category 2, the Board responds by incorporating the same responses as those provided relating to Category 1.

Please feel free to contact me if you wish to discuss this matter further.

Sincerely,



Kerrie Webb
Senior Staff Counsel

Encl.

COMPLAINT

Online Complaint Summary

5/15/14 6:49 PM

Page 1 of 4

Board:	Medical Board of California
License Type:	Physician's and Surgeon's
Complaint Number:	8002014005263
Incident Date:	06/04/2013

Description:

Bruce T. Murray
1931 E Street
San Diego, CA 92102
619-501-8556
www.sagelaw.us
murray@sagelaw.us

The Medical Board of California
Sacramento, CA 95815

Dear Sir or Madame:

I am writing to ask your assistance regarding the death of my mother, Audrey B. Murray, who died last June about 30 hours following an elective heart procedure. The doctor, James C. Matchison, either can't or won't tell me what caused her death.

My mother was 86 and suffering from chronic obstructive pulmonary disease. At the time of the procedure, Dr. Matchison gave her about two years to live, but she only made it 30 hours into her assessed time period.

On June 11, 2013, I spoke with Dr. Matchison over the phone regarding my mother's death. He told me, "I don't know what caused her precipitous decline. I have no great explanation for what happened."

I need better than that.

Dr. Matchison lost a patient - my mother - and if he does not know what caused her death, he really should if he is to continue operating on patients.

There may be a perfectly good explanation for what happened. Dr. Matchison may not have been negligent at all. But his non-explanation gets me nowhere closer to the truth; and unfortunately, California medical malpractice law provides me with no legal leverage to encourage a better explanation. If indeed Dr. Matchison has no idea why he lost a patient, I think he owes an answer not only to me, but also to his medical peers.

Thank you for your assistance.

Bruce T. Murray

Copied below are my own notes of my mother's final 30 hours, based on the medical reports:

Performing physician:
Dr. James C. Matchison
2841 Lomita Blvd, suite 235
Torrance, CA 90505-5111

License number: A00097926

6/4/13

10 a.m. Cardiac Catheterization procedure by Dr. James C. Matchison

Elective right and left heart catheterization performed for assessment of aortic valve stenosis.

She is given local anesthetic Lidocaine.

First attempted to go in through right internal jugular vein.

Doctor discovered she had "severe hypovolemia."

So went in through right femoral vein.

Right heart catheter removed, and attention turned to right radial artery access.

Catheter used to cannulate left main and right coronary artery.

Procedure was complicated by transient hypotension secondary to dehydration and oversedation.

Given dopamine.

Attempted to cross aortic valve, but "aortic valve was not crossed."

Right scapular (shoulder) pain of unknown etiology (cause) therefore procedure aborted.

Procedure caused her to become hypotensive, so she is admitted to hospital overnight.

6/5/13

11:39 a.m. Discharged from hospital recovery; brother Bill brings Mom home. She continues to experience shoulder pain; the pain grows more acute.

3:15 p.m. Bill brings her to the emergency room at Torrance Memorial.

3:30 p.m. Arrives at emergency room.

4 p.m. Respiratory arrest. Approximately 30 hours after procedure.

"Cardiopulmonary arrest secondary to chronic obstructive pulmonary disease."

- Dr. Elisa Anhalt, emergency room physician.

Theories of possible causes of death:

1. The cardiac catheterization procedure was negligently performed.

2. Mom was improperly selected for this procedure; the doctor did not adequately screen her; did not know of her underlying condition; she was too weak to undergo this type of procedure.

3. Over-sedation - negligent anesthesia.

5. None of the above:

- She would have died anyway at this particular time despite the procedure.
- Regardless of this procedure, she would have died anyway at this particular time.
- The procedure was not sufficient to trigger her death at this particular time, and the procedure was not a necessary condition for her death.

Respondent

License Type:

First Name:

Second Name:

Last Name:

Gender:

Address:

Phone Number:

Extension:

E-mail Address:

Complainant

First Name:

Second Name:

Last Name:

Gender:

Address:

Phone Number:

Extension:

E-mail Address:

Physician's and Surgeon's

James

C.

Matchison

M

2841 Lomita Blvd, suite 235

Torrance, CA

90505-5151

US

(310) 222-2401

Bruce

Thomas

Murray

M

1931 E Street

San Diego, CA

92102

US

619-501-8556

murray@sagelaw.us

CORRESPONDENCE AND AUTHORIZATIONS



MEDICAL BOARD OF CALIFORNIA
Central Complaint Unit



April 14, 2015

Bruce T. Murray
1931 E. Street
San Diego, CA 92102

Re: James Matchison, M.D.
Control Number: 800 2014 005263

Dear Mr. Murray:

The Medical Board of California has completed its review of your complaint against Dr. James Matchison.

As a licensing agency, the Board has the authority to ensure that its licensees abide by the provisions of the California Business and Professions Code. Your complaint and all relevant medical records were reviewed by the Board's Medical Consultant. It was the opinion of our consultant that the treatment rendered did not constitute a violation of the law as it relates to the practice of medicine. Therefore, the Board is unable to proceed with further action and has closed its case in this matter.

Thank you for contacting the Medical Board of California.

Sincerely,

Linda Serrano
Associate Enforcement Analyst

Control Number: 800 2014 005263



MEDICAL BOARD OF CALIFORNIA
Central Complaint Unit



January 15, 2015

BRUCE THOMAS MURRAY
1931 E STREET
SAN DIEGO, CA 92102



Dear BRUCE THOMAS MURRAY:

This letter is to update you on the status of your complaint filed with our office against
Dr. JAMES CHRISTOPHER MATCHISON.

We have received all records and documentation required for a thorough review of your
complaint. These documents were forwarded to our medical consultant for review and
evaluation. Please see the enclosed brochure for information on the medical consultant review
process.

You will be notified in writing of the results of the medical consultant's review.

Thank you for your cooperation and patience.

Sincerely,

Linda Serrano
Associate Enforcement Analyst
(916) 576-3231

Control Number: 800 2014 005263

Serrano, Linda@MBC

From: Serrano, Linda@MBC
Sent: Wednesday, October 08, 2014 9:29 AM
To: 'murray@sagelaw.us'
Subject: Control No. 800 2014 005263 Status

Hello Bruce,

I received your call where you wanted confirmation that we had received all the documents we requested, yes and thank you. The case is being processed. I will keep you informed of future status of your case via letter.

Respectfully,

Linda Serrano

Associate Enforcement Analyst
Medical Board of California
2005 Evergreen Street Suite 1200
Sacramento, CA 95815
(916) 576-3231 P
(916) 263-2435 F

Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

Serrano, Linda@MBC

From: Bruce T. Murray <murray@sagelaw.us>
Sent: Monday, December 15, 2014 1:39 PM
To: Serrano, Linda@MBC
Subject: Re: Control No. 800 2014 005263 Status

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Linda,

I was hoping to get copies of Dr. Matchison's § 2240 and § 1356.4 forms before Christmas. Would this be possible?

Best regards,
Bruce Murray

Cal Bus & Prof Code § 2240 -- Report for Death of Patient
16 CCR § 1356.4 -- Outpatient Surgery-Reporting of Death

On 10/8/2014 9:29 AM, Serrano, Linda@MBC wrote:

Hello Bruce,

I received your call where you wanted confirmation that we had received all the documents we requested, yes and thank you. The case is being processed. I will keep you informed of future status of your case via letter.

Respectfully,

Linda Serrano

Associate Enforcement Analyst
Medical Board of California
2005 Evergreen Street Suite 1200
Sacramento, CA 95815
(916) 576-3231 P
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*** Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended

Peter B Murray
5 Patrina Circle
Laguna Niguel, CA 92677
peter@peterbmurray.com
949-636-2352 Cell

September 9, 2014

Re: Audrey B Murray

To whom it may concern,
I Peter B Murray am the successor trustee of the Audrey B Murray estate. If you have any questions regarding this request you may contact my brother Bruce T Murray or myself.
Thank you for your assistance,



Peter B Murray, trustee



MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM
2005 Evergreen Street, Suite 1200, Sacramento, CA 95815



AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Patient Name: Audrey B. Murray	Date of Birth: 5/11/1927	Date of Death: 6/5/2013
Medical Record Number: (If known) 1348291	Control Number: 800 2014 005263	

I, the undersigned hereby authorize:

Physician/Facility: Torrance Memorial Medical Center

Address: 3330 Lomita Blvd.

City/State/Zip Code: Torrance, CA 90505

Phone Number: 310-325-9110 Treatment Date(s): 6/5/2013

This medical release includes any and all dates of treatment records sought by the Medical Board
to disclose medical records in the course of my diagnosis and treatment to the Medical Board of California, Enforcement Program, a healthcare oversight agency. This disclosure of records authorized herein is required for official use, including investigation and possible administrative and/or criminal proceedings regarding any violations of the laws of the State of California. This authorization shall remain valid for three years from the date of signature. A copy of this authorization shall be as valid as the original. I understand that I have the right to receive a copy of this authorization if requested by me. I understand that I have a right to revoke this authorization by sending written notification to the Medical Board of California at the above address. My written revocation will be effective upon receipt by the Medical Board of California but will not be effective to the extent that such persons have acted in reliance upon this Authorization. I understand that the recipient of my information is not a health plan or health care provider and the released information may no longer be protected by federal privacy regulations.

Patient Signature: _____ Date _____

or: Peter B. Murray Successor Trustee 9-9-14

Peter B. Murray Legal Representative Relationship Date

NOTE: Failure by a physician, podiatrist, or health care provider to provide the requested records within 15 days, or a health care facility within 30 days, of receipt of this request and authorization may constitute a violation of Section 2225.5 of the Medical Practice Act and may result in further action by the Board.



MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM
2005 Evergreen Street, Suite 1200, Sacramento, CA 95815



AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Patient Name: Audrey B. Murray	Date of Birth: 5/11/1927	Date of Death: 6/5/2013
Medical Record Number: (If known) 1348291	Control Number: 800 2014 005263	

I, the undersigned hereby authorize:

Physician/Facility: Dr. James C. Matchison
Address: 2841 Lomita Blvd, Suite 235
City/State/Zip Code: Torrance, CA 90505-5111
Phone Number: 310-784-4800 Treatment Date(s): 6/4/2013

~~This medical release includes any and all dates of treatment sought by the medical board.~~

to disclose medical records in the course of my diagnosis and treatment to the Medical Board of California, Enforcement Program, a healthcare oversight agency. This disclosure of records authorized herein is required for official use, including investigation and possible administrative and/or criminal proceedings regarding any violations of the laws of the State of California. This authorization shall remain valid for three years from the date of signature. A copy of this authorization shall be as valid as the original. I understand that I have the right to receive a copy of this authorization if requested by me. I understand that I have a right to revoke this authorization by sending written notification to the Medical Board of California at the above address. My written revocation will be effective upon receipt by the Medical Board of California but will not be effective to the extent that such persons have acted in reliance upon this Authorization. I understand that the recipient of my information is not a health plan or health care provider and the released information may no longer be protected by federal privacy regulations.

Patient Signature: or: <u>Peter B. Murray</u>	Date: <u>9-9-14</u>
<u>Peter B. Murray</u> Legal Representative	<u>Successor Trustee</u> Relationship
	Date

NOTE: Failure by a physician, podiatrist, or health care provider to provide the requested records within 15 days, or a health care facility within 30 days, of receipt of this request and authorization may constitute a violation of Section 2225.5 of the Medical Practice Act and may result in further action by the Board.

CONFIRMATION OF MEAL RECORD

..30520.13441606

CERTIFICATE OF DEATH

3201318025139

This is a true certified copy if the record filed in the County of Los Angeles Department of Public Health if it bears the Registrar's signature in purple ink.

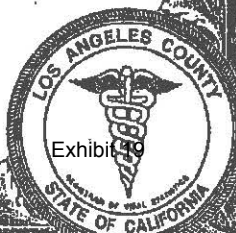
Jonathan Fielding DATE ISSUED
Director of Public Health and Registrar

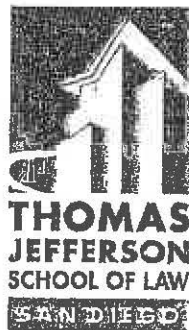
JUN 20 2013

This copy not valid unless prepared on engraved border displaying seal and signature of Registrar.



* H Q 3 2 6 2 7 9 1 *





BRUCE T. MURRAY

J.D. Candidate
Author and Journalist

www.SageLaw.us

murray@sagelaw.us

University of Massachusetts Press

www.umass.edu

[/umass.edu/umpress/title/religious-liberty-america](http://umass.edu/umpress/title/religious-liberty-america)

619-501-8556

www.tjsl.edu



MEDICAL BOARD OF CALIFORNIA
Central Complaint Unit



September 09, 2014



BRUCE THOMAS MURRAY
1931 E STREET
SAN DIEGO, CA 92102

Re: JAMES CHRISTOPHER MATCHISON, M.D.
Control #: 800 2014 005263

Dear BRUCE THOMAS MURRAY:

We have reviewed your complaint and need to contact you for additional information.

We request the following information: Please provide a copy of your late mother's, Audrey B. Murray, final death certificate.

We would very much appreciate receiving your response by September 29, 2014. Please refer to the "Control Number" above when replying.

Sincerely,

Linda Serrano
Associate Enforcement Analyst
(916) 576-3231

BRUCE Thomas MURRAY

1931 E Street ♦ San Diego, CA 92102 ♦ (619) 501-8556 ♦ murray@sagelaw.us

Sept. 4, 2014

Linda Serrano
Associate Enforcement Analyst
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831

RECEIVED
MEDICAL BOARD OF
CALIFORNIA
2014 SEP - 9 AM 9:14
COMPLAINT UNIT

Dear Ms. Serrano:

In order to avoid further delay, I am sending you the enclosed information and authorizations that are available to me at this time, in hopes that this will be sufficient to enable you to proceed with your investigation into my mother's death.

As I stated on my voice mail message to you, I am a beneficiary, but not the trustee/personal representative of my mother's estate. The California Business and Professions Code suggests that either the personal representative or a beneficiary of a deceased person is authorized to release confidential medical information:

"In any investigation that involves the death of a patient, the board may inspect and copy the medical records of the deceased patient without the authorization of the **beneficiary or personal representative** of the deceased patient ... Nothing in this subdivision shall be construed to allow the board to inspect and copy the medical records of a deceased patient without a court order when the **beneficiary or personal representative** of the deceased patient has been located and contacted but has refused to consent to the board inspecting and copying the medical records of the deceased patient. Cal Bus & Prof Code § 2225. (Emphasis added.)

The repeated disjunctive use of beneficiary OR personal representative strongly suggests that either the personal representative or the beneficiary is authorized to release the confidential informational of a deceased patient. Therefore, as a beneficiary of my mother, I hereby grant the Medical Board of California full permission and access to all of my mother's medical records, as necessary to conduct the investigation into her death.

Also, I note that the list of required information, as stated in your May 23 letter to me, includes the following bullet point: "Date of death (enclose copy of the death certificate)."

I note that the words, "copy of the death certificate," are listed in brackets, following the request for "date of death." I interpret this to mean that confirmation of the date of death is the most important information, rather than the death certificate itself.

Therefore, because I do not have possession of my mother's death certificate (nor is my signature on it), I am instead enclosing the Lexis record of her death. I hope that this is sufficient for your purposes.

Please feel free to contact me by phone or by email if you have any questions.

Sincerely,



California Death Record

This data is for informational purposes only.

Decedent Information

Name: MURRAY, AUDREY BEVAN
Address: 5107 KINGSPINE RD
ROLLING HILLS ESTATES, CA 90274-2417
LOS ANGELES COUNTY
LexID(sm): 001804699081

Decedent Personal Information

SSN: XXX-XX-XXXX
Age: 86
Date Of Death: 06/05/2013
Date of Birth: 05/1927

Family Information

Father: BEVAN, JAMES JENNINGS
Mother: HEINTZBMAN, HELEN

Death Information

Important:

The Public Records and commercially available data sources used on reports have errors. Data is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified. For Secretary of State documents, the following data is for information purposes only and is not an official record. Certified copies may be obtained from that individual state's Department of State.

Your DPPA Permissible Use is: I have no permissible use

Your GLBA Permissible Use is: I have no permissible use

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MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM
2005 Evergreen Street, Suite 1200, Sacramento, CA 95815



AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Patient Name: Audrey B. Murray	Date of Birth: 5/11/1927	Date of Death: 6/5/2013
Medical Record Number: (If known) 1348291	Control Number: 800 2014 005263	

I, the undersigned hereby authorize:

Physician/Facility: Dr. James C. Matchison

Address: 2841 Lomita Blvd, suite 235

City/State/Zip Code: Torrance, CA 90505-5111

Phone Number: 310-784-4800 Treatment Date(s): 6/4/2013

This medical release includes any and all dates of treatment sought by the medical board.

to disclose medical records in the course of my diagnosis and treatment to the **Medical Board of California, Enforcement Program**, a healthcare oversight agency. This disclosure of records authorized herein is required for official use, including investigation and possible administrative and/or criminal proceedings regarding any violations of the laws of the State of California. This authorization shall remain valid for three years from the date of signature. A **copy of this authorization shall be as valid as the original**. I understand that I have the right to receive a copy of this authorization if requested by me. I understand that I have a right to revoke this authorization by sending written notification to the Medical Board of California at the above address. My written revocation will be effective upon receipt by the Medical Board of California but will not be effective to the extent that such persons have acted in reliance upon this Authorization. I understand that the recipient of my information is not a health plan or health care provider and the released information may no longer be protected by federal privacy regulations.

Patient Signature: Bruce Murray Date: 9/4/2014
or: beneficiary Legal Representative son Relationship Date

NOTE: Failure by a physician, podiatrist, or health care provider to provide the requested records within 15 days, or a health care facility within 30 days, of receipt of this request and authorization may constitute a violation of Section 2225.5 of the Medical Practice Act and may result in further action by the Board.



MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM
2005 Evergreen Street, Suite 1200, Sacramento, CA 95815



AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Patient Name:

Audrey B. Murray

Date of Birth:

5/11/1927

Date of Death:

6/5/2013

Medical Record Number:
(If known)

1348291

Control Number:

800 2014 005263

I, the undersigned hereby authorize:

Physician/Facility: Torrance Memorial Medical Center

Address: 3330 Comita Blvd.

City/State/Zip Code: Torrance, CA 90505

Phone Number: 310-325-9110 Treatment Date(s): 6/5/2013

This medical release includes any and all dates of treatment records sought by the medical board.

to disclose medical records in the course of my diagnosis and treatment to the Medical Board of California, Enforcement Program, a healthcare oversight agency. This disclosure of records authorized herein is required for official use, including investigation and possible administrative and/or criminal proceedings regarding any violations of the laws of the State of California. This authorization shall remain valid for three years from the date of signature. A copy of this authorization shall be as valid as the original. I understand that I have the right to receive a copy of this authorization if requested by me. I understand that I have a right to revoke this authorization by sending written notification to the Medical Board of California at the above address. My written revocation will be effective upon receipt by the Medical Board of California but will not be effective to the extent that such persons have acted in reliance upon this Authorization. I understand that the recipient of my information is not a health plan or health care provider and the released information may no longer be protected by federal privacy regulations.

Patient Signature:

Date

or:

Bruce Murray

son

9/4/2014

beneficiary Legal Representative

Relationship

Date

NOTE: Failure by a physician, podiatrist, or health care provider to provide the requested records within 15 days, or a health care facility within 30 days, of receipt of this request and authorization may constitute a violation of Section 2225.5 of the Medical Practice Act and may result in further action by the Board.



MEDICAL BOARD OF CALIFORNIA
Central Complaint Unit



SECOND REQUEST

July 22, 2014



BRUCE THOMAS MURRAY
1931 E STREET
SAN DIEGO, CA 92102

Re: James Christopher Matchison, M.D.
Control #: 800 2014 005263

Dear BRUCE THOMAS MURRAY:

This is to follow up on our letter to you dated May 23, 2014 requesting Authorization for Release of Medical Records for your late mother Audrey B. Murray. As of this date, the Medical Board has not received a response from you.

In order for the Board to complete a thorough analysis of your complaint, it is imperative that a response be received from you by August 11, 2014. If we do not receive a response from you by the due date specified, we will be unable to proceed with a review of your complaint and the file will be closed. A copy of the Board's previous correspondence is enclosed for your reference. Please refer to the "Control Number" above when replying.

Sincerely,

Linda Serrano
Associate Enforcement Analyst
(916) 576-3231

Enclosure



MEDICAL BOARD OF CALIFORNIA
Central Complaint Unit



May 23, 2014

BRUCE THOMAS MURRAY
1931 E STREET
SAN DIEGO, CA 92102



Re: JAMES CHRISTOPHER MATCHISON, M.D.
Control #: 800 2014 005263

Dear BRUCE THOMAS MURRAY:

This letter is concerning the correspondence you submitted to the Medical Board for review.

In order to proceed any further, a copy of your mother's, Audrey B. Murray's, medical records must be obtained. To do so, we must have you complete and sign the enclosed **Authorization for Release of Medical Records** forms. Please list any other health care providers involved in the care of your mother as you outlined in your complaint, including the complete names and addresses of each physician and facility. Please return these forms to our office by **June 16, 2014**.

It is important for you to know that the medical releases will not be valid if they contain any additional comments written on these forms. If you have any additional information concerning your complaint, please submit it on a separate sheet of paper. Do not write any comments on the medical release forms.

The following information must be completed on the enclosed forms (if applicable):

- Patient's name
- Date of birth
- **Date of death (enclose copy of the death certificate)**
- Medical Record Number (If known)
- Physician/facility complete name, address and telephone number
- Treatment date(s) from the listed provider(s)
- Signature of next of kin as shown on death certificate

Once the medical records are received, your complaint will be reviewed to determine whether the care provided by the physician was within the standard of practice of medicine.

Thank you for your cooperation and for contacting the Medical Board of California.

Sincerely,

LINDA SERRANO
Associate Enforcement Analyst
(916) 576-3231

Enclosures

Exhibit 19



**MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM**
2005 Evergreen Street, Suite 1200, Sacramento, CA 95815



AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Patient Name: Audrey B. Murray	Date of Birth:	Date of Death:
Medical Record Number: (If known)	Control Number: 800 2014 005263	

I, the undersigned hereby authorize:

Physician/Facility: JAMES CHRISTOPHER MATCHISON, M.D.

Address: _____

City/State/Zip Code: _____

Phone Number: _____ Treatment Date(s): _____

to disclose medical records in the course of my diagnosis and treatment to the **Medical Board of California, Enforcement Program**, a healthcare oversight agency. This disclosure of records authorized herein is required for official use, including investigation, and possible administrative and/or criminal proceedings regarding any violations of the laws of the State of California. This authorization shall remain valid for three years from the date of signature. **A copy of this authorization shall be as valid as the original.** I understand that I have the right to receive a copy of this authorization if requested by me. I understand that I have a right to revoke this authorization by sending written notification to the Medical Board of California at the above address. My written revocation will be effective upon receipt by the Medical Board of California but will not be effective to the extent that such persons have acted in reliance upon this Authorization. I understand that the recipient of my information is not a health plan or health care provider and the released information may no longer be protected by federal privacy regulations.

Patient Signature: _____ Date _____

or: _____
Legal Representative Relationship Date

NOTE: Failure by a physician, podiatrist, or health care provider to provide the requested records within 15 days, or a health care facility within 30 days, of receipt of this request and authorization may constitute a violation of Section 2225.5 of the Medical Practice Act and may result in further action by the Board.



**MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM**
2005 Evergreen Street, Suite 1200, Sacramento, CA 95815



AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Patient Name: Audrey B. Murray	Date of Birth:	Date of Death:
Medical Record Number: (If known)	Control Number: 800 2014 005263	

I, the undersigned hereby authorize:

Physician/Facility: _____

Address: _____

City/State/Zip Code: _____

Phone Number: _____ Treatment Date(s): _____

to disclose medical records in the course of my diagnosis and treatment to the Medical Board of California, Enforcement Program, a healthcare oversight agency. This disclosure of records authorized herein is required for official use, including investigation and possible administrative and/or criminal proceedings regarding any violations of the laws of the State of California. This authorization shall remain valid for three years from the date of signature. A copy of this authorization shall be as valid as the original. I understand that I have the right to receive a copy of this authorization if requested by me. I understand that I have a right to revoke this authorization by sending written notification to the Medical Board of California at the above address. My written revocation will be effective upon receipt by the Medical Board of California but will not be effective to the extent that such persons have acted in reliance upon this Authorization. I understand that the recipient of my information is not a health plan or health care provider and the released information may no longer be protected by federal privacy regulations.

Patient Signature: _____ Date: _____

or: _____

Legal Representative

Relationship

Date

NOTE: Failure by a physician, podiatrist, or health care provider to provide the requested records within 15 days, or a health care facility within 30 days, of receipt of this request and authorization may constitute a violation of Section 2225.5 of the Medical Practice Act and may result in further action by the Board.



MEDICAL BOARD OF CALIFORNIA
Central Complaint Unit



May 23, 2014

BRUCE THOMAS MURRAY
1931 E STREET
SAN DIEGO, CA 92102



Re: JAMES CHRISTOPHER MATCHISON, M.D.
Control #: 800 2014 005263

Dear BRUCE THOMAS MURRAY:

This letter is concerning the correspondence you submitted to the Medical Board for review.

In order to proceed any further, a copy of your mother's, Audrey B. Murray's, medical records must be obtained. To do so, we must have you complete and sign the enclosed **Authorization for Release of Medical Records** forms. Please list any other health care providers involved in the care of your mother as you outlined in your complaint, including the complete names and addresses of each physician and facility. Please return these forms to our office by June 16, 2014.

It is important for you to know that the medical releases will not be valid if they contain any additional comments written on these forms. If you have any additional information concerning your complaint, please submit it on a separate sheet of paper. Do not write any comments on the medical release forms.

The following information must be completed on the enclosed forms (if applicable):

- Patient's name
- Date of birth
- Date of death (enclose copy of the death certificate)
- Medical Record Number (if known)
- Physician/facility complete name, address and telephone number
- Treatment date(s) from the listed provider(s)
- Signature of next of kin as shown on death certificate

Once the medical records are received, your complaint will be reviewed to determine whether the care provided by the physician was within the standard of practice of medicine.

Thank you for your cooperation and for contacting the Medical Board of California.

Sincerely,

LINDA SERRANO
Associate Enforcement Analyst
(916) 576-3231

Enclosures

Exhibit 19



MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM
2005 Evergreen Street, Suite 1200, Sacramento, CA 95815



AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Patient Name: Audrey B. Murray	Date of Birth:	Date of Death:
Medical Record Number: (If known)	Control Number: 800 2014 005263	

I, the undersigned hereby authorize:

Physician/Facility: JAMES CHRISTOPHER MATCHISON, M.D.

Address: _____

City/State/Zip Code: _____

Phone Number: _____

Treatment Date(s): _____

I to disclose medical records in the course of my diagnosis and treatment to the Medical Board of California, Enforcement Program, a healthcare oversight agency. This disclosure of records authorized herein is required for official use, including investigation and possible administrative and/or criminal proceedings regarding any violations of the laws of the State of California. This authorization shall remain valid for three years from the date of signature. A copy of this authorization shall be as valid as the original. I understand that I have the right to receive a copy of this authorization if requested by me. I understand that I have a right to revoke this authorization by sending written notification to the Medical Board of California at the above address. My written revocation will be effective upon receipt by the Medical Board of California but will not be effective to the extent that such persons have acted in reliance upon this Authorization. I understand that the recipient of my information is not a health plan or health care provider and the released information may no longer be protected by federal privacy regulations.

Patient Signature: _____ Date: _____

or: _____

Legal Representative

Relationship

Date

NOTE: Failure by a physician, podiatrist, or health care provider to provide the requested records within 15 days, or a health care facility within 30 days, of receipt of this request and authorization may constitute a violation of Section 2225.5 of the Medical Practice Act and may result in further action by the Board.



**MEDICAL BOARD OF CALIFORNIA
ENFORCEMENT PROGRAM**
2005 Evergreen Street, Suite 1200, Sacramento, CA 95815



AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Patient Name: Audrey B. Murray	Date of Birth:	Date of Death:
Medical Record Number: (If known)	Control Number: 800 2014 005263	

I, the undersigned hereby authorize:

Physician/Facility: _____

Address: _____

City/State/Zip Code: _____

Phone Number: _____ Treatment Date(s): _____

to disclose medical records in the course of my diagnosis and treatment to the **Medical Board of California, Enforcement Program**, a healthcare oversight agency. This disclosure of records authorized herein is required for official use, including investigation and possible administrative and/or criminal proceedings regarding any violations of the laws of the State of California. This authorization shall remain valid for three years from the date of signature. **A copy of this authorization shall be as valid as the original.** I understand that I have the right to receive a copy of this authorization if requested by me. I understand that I have a right to revoke this authorization by sending written notification to the Medical Board of California at the above address. My written revocation will be effective upon receipt by the Medical Board of California but will not be effective to the extent that such persons have acted in reliance upon this Authorization. I understand that the recipient of my information is not a health plan or health care provider and the released information may no longer be protected by federal privacy regulations.

Patient Signature: _____ Date: _____

or: _____
Legal Representative Relationship Date

NOTE: Failure by a physician, podiatrist, or health care provider to provide the requested records within 15 days, or a health care facility within 30 days, of receipt of this request and authorization may constitute a violation of Section 2225.5 of the Medical Practice Act and may result in further action by the Board.



MEDICAL BOARD OF CALIFORNIA
Central Complaint Unit



May 19, 2014



BRUCE THOMAS MURRAY
1931 E STREET
SAN DIEGO, CA 92102

Dear BRUCE THOMAS MURRAY:

This is to acknowledge your recent correspondence regarding Dr. JAMES CHRISTOPHER MATCHISON. An Enforcement Analyst will be assigned to review your complaint to determine whether additional information may be necessary to evaluate your concerns, as well as confirm that the nature of your complaint falls within our jurisdiction. Please review the enclosed brochure for information about our complaint process.

If you have additional information regarding your complaint, please send it immediately and refer to the control number shown below in your correspondence or contacts with us. You will be advised of the status of your complaint at various stages throughout the complaint review process.

We appreciate your patience and thank you for bringing your concerns to our attention.

CENTRAL COMPLAINT UNIT
MEDICAL BOARD OF CALIFORNIA

Control Number: 8002014005263

BRUCE T. MURRAY

1931 E Street ♦ San Diego, CA 92102 ♦ (619) 501-8556 ♦ murray@sagelaw.us

July 10, 2017

Kerrie Webb, Esq.
Staff Counsel
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Re: Your May 26, 2017 reply to my request for information regarding Audrey B. Murray

Dear Ms. Webb:

Please let this letter serve to “meet and confer” with you regarding your May 26, 2017 response to my April 27, 2017 letter requesting information regarding the death of my mother, Audrey B. Murray.

In your response, you sent a small cache of records that I myself had written, provided or already received from the Medical Board. Producing documents already obviously in my custody or control is a gesture that is not well-taken.

Regarding your bases for denying my request for information, I reply as follows:

I. The California Public Records Act does not subsume the Information Practices Act

I note that the bulk of your denial of my request is dedicated to analyzing my request under the California Public Records Act rather than the Information Practices Act. Although I invited you to consider CPRA in your response, please note that my April 27 request begins, “In accordance with the Information Practices Act and all other applicable laws of this state, please provide me with all information in the Medical Board’s possession regarding Audrey B. Murray’s medical condition, treatment and the circumstances and cause(s) of her death.”

Since the CIPA is central to my request, an analysis under that law would be in order. Instead, you skip CIPA and go directly to CPRA by invoking Cal. Civ. Code § 1798.24(g). However, this provision of CIPA simply allows personal information otherwise protected by CIPA to be released via CPRA. But you use § 1798.24(g) as a shortcut to the CPRA exemptions – and then deny my request on that basis. This is an invalid analysis. Section 1798.24(g) is not a trapdoor getaway clause out of CIPA. If the clause could be used in this way, this entire section of the CIPA would effectively cease to exist and simply fold into CPRA. One law cannot be used to nullify another in this manner.

Regarding my right to receive information as “the authorized representative of the individual to whom the information pertains” under § 1798.24(c), my brother, Peter B. Murray, already provided the Medical Board with the broadest possible authorization in his Sept. 9, 2014 correspondence (among the redundant documents sent to me in your May 26 correspondence). More importantly, I have already established my beneficial right

to receive this information under Cal. Code Civ. Proc. §§ 1085-6, and I will estop any assertion to the contrary.¹

II. Public policy favors the release of this information under both CPRA and the Evidence Code

In considering the release of official information under CPRA, the Court's overarching approach requires close consideration of the facts presented: "Each request for records must be 'considered on the facts of the particular case' in light of the competing 'public interests.'" *Times Mirror Co. v. Superior Court*, 53 Cal.3d 1325 (1991). Here, you have made various conclusory statements asserting the Medical Board's interest over the public interest, but you have provided no analysis of the facts of my particular case. Furthermore, none of the cases that you cite is factually analogous to my request; and none of your cases involves requests for information from the Medical Board. Thus, the public interest as weighed against the Medical Board has not been tested.

Your cases involve the following facts and circumstances:

- *Times Mirror Co. v. Superior Court* involved a request from the Los Angeles Times to the California governor requesting "appointment schedules, calendars, notebooks and any other documents that would list [the Governor's] daily activities as governor." That case turned on the "deliberative process" exemption recognized under Cal. Gov. Code § 6255. However, I have never requested information into the Medical Board's deliberative process.² Furthermore, any Medical Board documents containing such privileged information could be appropriately redacted, as my request specifies.
- In *San Jose v. Superior Court*, the Mercury News sought access to the names, addresses, and telephone numbers of 215 individuals who had lodged complaints about noise from the San Jose International Airport. The court denied the newspaper's request in order to protect the privacy interests of the complainants. Here, I am not asking for the private information of third parties, but information that is privileged to me, as the beneficiary of my mother. Additionally, the *San Jose* court noted that "the Mercury News has alternative means of contacting and interviewing the complainants other than by intruding on their privacy." *Id.* at 1025. Here, I have no other means of obtaining the information that I seek.
- In *County of Santa Clara v. Superior Court*, the California First Amendment Coalition requested that the county disclose its geographic information system (GIS) "basemap." The court ordered the county to release this information over the county's concerns regarding security, terrorism and the release of "critical infrastructure information." The lower court had concluded that "the County had not shown a **clear overbalance** in favor of nondisclosure" (*Id.* at 1323), and the appellate court agreed. [Emphasis added.] Here, the information I seek has nothing to do with public infrastructure – or the accompanying security concerns. *A fortiori*, the information I seek regarding my mother's death is disclosable to me.

¹ Los Angeles County Super. Ct., No. BS158575.

² Note that my prior writ action was for traditional mandate under Cal. Code Civ. Proc. § 1085, and not an action for administrative mandate under Cal. Code Civ. Proc. § 1094.5.

More factually analogous, and thus persuasive, are cases in which a death is involved, and a surviving family member seeks information from a public agency. For example:

- In *Shepherd v. Superior Court*, a mother brought a wrongful death action against police officers who allegedly shot and killed her 14-year-old son. She sought relevant documents from the District Attorney, who asserted absolute privilege. The California Supreme Court held that the respondent district attorney's claim of "public interest in secrecy ... wholly fails"; and then the Court ordered a particularized balancing of each item of information sought by the petitioner. *Shepherd v. Super. Ct.*, 17 Cal. 3d 107, 113, 130 (1976).
- *Michael P. v. Superior Court* involved a father who was subject to a dependency action – stemming from the death of a friend's child died while in the man's custody. The father sought the investigative reports from the sheriff and coroner, but the agencies refused. The appellate court vacated the lower court's decision granting the agencies' motion to quash petitioner's request for the reports. In so doing, the court weighed strongly in favor of the petitioner father's interest in obtaining information gathered by public agencies. *Michael P. v. Super. Court*, 92 Cal. App. 4th 1036, 1048 (2001).
- In *Dominguez v. Super. Court*, the father of an 18-year-old man who had been shot and stabbed to death by a retired officer brought a wrongful death action against the police. The San Gabriel Police Department refused to release the retired officer's personnel and complaints records. The appellate court rejected the city's claim of blanket privilege, and ordered the lower court to weigh release of the documents under qualified privilege set forth in Cal. Evid. Code § 1040. *Dominguez v. Super. Court of L.A. Cnty.*, 101 Cal. App. 3d 6 (1980).

The public policy is clear: When a death is involved, the interests of justice favor the release of official documents. In discerning this policy, it is irrelevant whether the parties involved are plaintiffs in an action for damages or petitioners in a writ action. The substance is more important than the form or procedure.

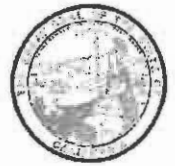
Because I am entitled to the information I seek as the beneficiary of my mother, and because I am entitled to it as a member of the public, please release to me the information that I seek.

Sincerely,





MEDICAL BOARD OF CALIFORNIA
Executive Office



August 4, 2017

Bruce T. Murray
1931 E Street
San Diego, CA 92102

RE: Your Request for Records Regarding Audrey B. Murray, Control No. 800 2014 005263

Dear Mr. Murray:

I am writing on behalf of the Medical Board of California (Board) in response to your letter dated July 10, 2017. In your letter, you replied as follows to the Board's bases for denying your requests for information:

- I. The California Public Records Act does not subsume the Information Practice Act; and
- II. Public policy favors the release of this information under both CPRA and the Evidence Code.

First, once it was determined that 1) you were seeking information relating to another person; 2) you were not the trustee of Audrey B. Murray's estate; and 3) the letter signed by trustee Peter B. Murray was not sufficient to permit the Board to release Ms. Murray's medical records to you, it was appropriate to evaluate the request as a Public Records Act request, and respond accordingly. Absent additional documentation, the Board is unable to release Ms. Murray's medical records to you. As discussed below, you are free to get the medical records from the actual creators of those records.

Second, the information and documents you are requesting regarding the investigation of the complaint involving Ms. Murray fall under specific exemptions to the Public Records Act, including, but not limited to, Government Code section 6254 subdivision (f) and section 6255. These exemptions, among others, were intentionally written and codified by the legislature and governor to protect state agencies' records of investigation, as appropriate.

The Board has evaluated your request to determine if public policy weighs in favor of releasing the documents despite the clear exemptions. While the Board obtained a copy of Ms. Murray's medical records, this was done pursuant to an investigation of a complaint. You are free, with the proper release, to obtain Ms. Murray's medical records directly from the facilities and medical providers who provided care and treatment to Ms. Murray as the creators and custodians of those records.

Exhibit 21

With regard to your requests for "information, reports and statements" acquired by the Medical Board, including from Dr. James Matchison, regarding Audrey B. Murray's medical condition, treatment and death, the Board has determined that it would be detrimental to the Board's investigation process to release this information. Physicians provide statements to the Board with the understanding that the Board will guard the confidentiality of such statements to the extent permitted by law. This process enhances the Board's ability to obtain information to perform a thorough and complete investigation. If the Board were to release such statements and information pursuant to a Public Records Act or Information Practices Act request, the Board believes physicians would be less likely to provide statements, which would hamper the Board's investigation process. Because these documents fall squarely within exemptions to the Public Records Act, among other code sections, the Board will not produce them.

Please feel free to contact me if you wish to discuss this matter further.

Sincerely,



Kerrie Webb
Senior Staff Counsel

BRUCE T. MURRAY

1931 E Street ♦ San Diego, CA 92102 ♦ (619) 501-8556 ♦ murray@sagelaw.us

January 8, 2018

Kerrie Webb, Esq.
Staff Counsel
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Re: Third request for information regarding Audrey B. Murray, Control No. 800 2014
005263

Dear Ms. Webb:

Please let this letter serve to “meet and confer” with you regarding your Aug. 4, 2017 letter, in which you reiterated your denial of my requests for information regarding my mother’s medical condition, treatment and death – and the subsequent Medical Board investigation. (My initial letter in this chain of requests was April 27, 2017, followed by a second letter July 10, 2017.)

Regarding your most recent bases for denying my request for information, I reply as follows:

1a. The issue of trustee authorization is moot, because Audrey B. Murray’s estate has been fully liquidated and distributed

In your Aug. 4 letter, you denied my request for information because (1) I am “seeking information relating to another person”; (2) I am “not the trustee of Audrey B. Murray’s estate”; and (3) “the letter signed by trustee Peter B. Murray was not sufficient to permit the board to permit the Board to release Ms. Murray’s medical records to you.” You suggested that additional documentation would enable to the Medical Board to release information to me.

Although it is not necessary, in order to facilitate the process, I am enclosing a copy of the August, 2017 bank statement for the Audrey B. Murray Trust, which shows the distribution of the final residual minutia of Audrey B. Murray’s estate. All of Audrey B. Murray’s assets have been fully liquidated and distributed. Thus, the role of trustee/ personal representative is a nullity, and the issue of trustee authorization is moot.

1b. Beneficiaries and trustees are equally entitled to receive and authorize the release of information

Notwithstanding the facts of 1a above, the status of Audrey's B. Murray's testamentary trust is irrelevant to my request for information from the Medical Board. There was never any need for the trustee to authorize the release of information, as you assert. In this context, the law makes no distinction between beneficiaries, trustees, executors and personal representatives. This is true across the California Civil Code, the Confidentiality of Medical Information Act, the Business & Professions Code, the Public Health & Safety Code, the Information Practices Act, the Probate Code, the Code of Civil Procedure and the common law. For example:

- “An authorization for the release of medical information by a provider of health care, health care service plan, pharmaceutical company, or contractor shall be valid if it ... (c) is signed and dated by ... (4) The **beneficiary or personal representative** of a deceased patient.” Cal. Civ. Code § 56.11. [Emphasis added.]
- “[I]n any investigation that involves the death of a patient, the board may inspect and copy the medical records of the deceased patient without the authorization of **the beneficiary or personal representative** of the deceased patient ... Nothing in this subdivision shall be construed to allow the board to inspect and copy the medical records of a deceased patient without a court order when the **beneficiary or personal representative** of the deceased patient has been located and contacted but has refused to consent.” Cal. Bus. & Prof Code § 2225(c)(1). [Emphasis added.] Thus, the code enables either a beneficiary or the personal representative to authorize or refuse the Board's access to medical records of a deceased patient. The beneficiary and personal representative have equal power.
- “Any patient representative shall be entitled to inspect patient records.” Cal. Health & Saf. Code § 123110. “‘Patient's representative’” or ‘representative’ means any of the following ... (4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.” Cal. Health & Saf. Code § 123105(e).
- The Information Practices Act allows an agency to disclose personal information not only to “the duly appointed guardian or conservator of the individual,” but also to “a person representing the individual.” Cal. Civ. Code § 1798.24(c). Here, the role of trustee/ personal representative has expired. Instead, I represent my mother and myself – as her survivor and beneficiary – in all matters concerning her medical treatment and death. I am her legal advocate.
- The California Code of Civil Procedure mandates the issuance of a writ “where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.” Cal. Code Civ. Proc. § 1086. The requirement that a petitioner be beneficially interested means that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large. The petitioner's interest in the outcome of the proceedings must be substantial. *Braude v. City of Los Angeles*, 226 Cal App 3d 83 (1990); *Tobe v. City of Santa Ana*, 9 Cal 4th 1069 (1995).

Here, in my first writ action against the Medical Board,¹ I conclusively established my standing and beneficial right to receive the information that I seek. In a future writ action, my beneficial right and standing are easily re-asserted through collateral estoppel/ issue preclusion.

In summary on this point, your assertion of a distinction between the rights of the trustee and beneficiary is simply a red herring and finds no support in the statutes, case law or public policy. Therefore, the Medical Board must release to me the information that I have requested.

2. The Medical Board generates and maintains unique medical information on patients, and therefore the Medical Board is subject to the same disclosure rules as medical providers

“Any business organized for the purpose of maintaining medical information ... in order to make the information available to an individual or to a provider of health care at the request of the individual or a provider of health care, for purposes of allowing the individual to manage his or her information, or for the diagnosis and treatment of the individual, shall be deemed to be a provider of health care subject to the requirements of this part.” Cal. Civ. Code § 56.06. Furthermore, “any patient representative shall be entitled to inspect patient records upon presenting to the health care provider of a patient.” Cal. Health & Saf. Code § 123110.

An inherent function of the Medical Board is to gather and analyze medical information of patients treated by licensees who are under investigation. As the originator and repository of this information, the Medical Board meets the criteria of a health care provider for the purposes of providing personal information to patients and their representatives.

Furthermore, the Medical Board employs consultants who are licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. As such, these consultants are health care providers under Cal. Health & Saf. Code § 123105; and they are subject to the same disclosure rules of Cal. Health & Saf. Code § 123110. Therefore, the Medical Board is obligated to disclose to me the identity of the consultants it retained for MBC investigation number 800 2014 005263, and release to me all of the information they produced regarding my mother’s medical condition, treatment and death.

3. The release of personal information to Beneficiary is mandatory; the Medical Board’s ‘balancing’ is erroneous and prejudicial against Beneficiary

The obligation of a public agency to release one’s personal information is always mandatory, i.e., “[E]ach agency *shall* permit any individual upon request and proper identification to inspect all the personal information in any record containing personal

¹ Los Angeles County Super. Ct., No. BS158575.

information and maintained by reference to an identifying particular assigned to the individual.” Cal. Civ. Code § 1798.34.² [Emphasis added.]

However, as I noted in my July 10 letter, you treated my request for personal information only as a public information request, and then you jumped to the exemptions under Cal. Gov. Code § 6254(f). From there, you set out “to determine if public policy weighs in favor of releasing the documents despite the clear exemptions” (from your Aug. 4 letter). Not surprisingly, the result of this entirely one-sided “balancing test” weighs substantially against me. This prejudicial and erroneous legal conclusion is precisely the sort of anti-due process that requires independent judicial review.

In light of the foregoing information and analysis, please reconsider my requests for information as reflected here and in my April 27, 2017 and July 10, 2017 letters.

Please respond by Jan. 29, 2018.

Sincerely,

A handwritten signature in black ink that reads "Bruce Murray". The signature is written in a cursive style with a large, looping "M" and a long, sweeping underline that extends to the right.

² Also note the mandatory language of Cal. Civ. Code § 56.10: “A provider of health care, a health care service plan, or a contractor **shall** disclose medical information.” [Emphasis added.] Also see Cal. Health & Saf. Code § 123110: “Any patient representative **shall** be entitled to inspect patient records upon presenting to the health care provider a written request for those records.”



CHASE PRIVATE CLIENT

July 01, 2017 through July 31, 2017

Primary Account:

CHASE PRIVATE CLIENT CHECKING

AUDREY B MURRAY TRUST

Account Number: 000000426524711

PETER B MURRAY TRUSTEE

CHECKING SUMMARY

	AMOUNT
Beginning Balance	\$31,364.50
Deposits and Additions	0.19
Checks Paid	-31,361.15
Ending Balance	\$3.54
Annual Percentage Yield Earned This Period	0.01%
Interest Paid This Period	\$0.19
Interest Paid Year-to-Date	\$2.34

CHECKS PAID

CHECK NUMBER	DATE PAID	AMOUNT
108 ^	07/21	\$825.00
109 ^	07/24	30,536.15
Total Checks Paid		\$31,361.15

If you see a check description in the Transaction Detail section, it means your check has already been converted for electronic payment. Because of this, we're not able to return the check to you or show you an image on Chase.com.

^ An image of this check may be available for you to view on Chase.com.

TRANSACTION DETAIL

DATE	DESCRIPTION	AMOUNT	BALANCE
	Beginning Balance		\$31,364.50
07/21	Check # 108	-825.00	30,539.50
07/24	Check # 109	-30,536.15	3.35
07/31	Interest Payment	0.19	3.54
	Ending Balance		\$3.54





CHASE PRIVATE CLIENT

August 01, 2017 through August 31, 2017

Primary Account:

CHASE PRIVATE CLIENT CHECKING

AUDREY B MURRAY TRUST

Account Number: 000000426524711

PETER B MURRAY TRUSTEE

CHECKING SUMMARY

	AMOUNT
Beginning Balance	\$3.54
Checks Paid	-3.54
Ending Balance	\$0.00
Annual Percentage Yield Earned This Period	0.00%
Interest Paid Year-to-Date	\$2.34

CHECKS PAID

CHECK NUMBER	DATE PAID	AMOUNT
110 ^	08/30	\$3.54
Total Checks Paid		\$3.54

If you see a check description in the Transaction Detail section, it means your check has already been converted for electronic payment. Because of this, we're not able to return the check to you or show you an image on Chase.com.

^ An image of this check may be available for you to view on Chase.com.

TRANSACTION DETAIL

DATE	DESCRIPTION	AMOUNT	BALANCE
	Beginning Balance		\$3.54
08/30	Check # 110	-3.54	0.00
	Ending Balance		\$0.00

**CHASE PRIVATE CLIENT CHECKING**

AUDREY B MURRAY TRUST

Account Number: 000000426524711

PETER B MURRAY TRUSTEE

CHECKING SUMMARY

Beginning Balance	AMOUNT
	\$0.00
Deposits and Additions	10.00
Ending Balance	\$10.00
Annual Percentage Yield Earned This Period	0.00%
Interest Paid Year-to-Date	\$2.34

TRANS \$10.00
TO KEEP ACCOUNT
OPEN

TRANSACTION DETAIL

DATE	DESCRIPTION	AMOUNT	BALANCE
	Beginning Balance		\$0.00
09/13	Online Transfer From Chk ...5868 Transaction#: 6514415326	10.00	10.00
	Ending Balance		\$10.00



MEDICAL BOARD OF CALIFORNIA
Executive Office



January 29, 2018

Bruce T. Murray
1931 E Street
San Diego, CA 92102

RE: Your Request for Records Regarding Audrey B. Murray, Control No. 800 2014 005263

Dear Mr. Murray:

I am writing on behalf of the Medical Board of California (Board) in response to your letter dated January 8, 2018. In your letter, you stated the following:

- 1a. The issue of trustee authorization is moot, because Audrey B. Murray's estate has been fully liquidated and distributed;
- 1b. Beneficiaries and trustees are equally entitled to receive and authorize the release of information;
2. The Medical Board generates and maintains unique medical information on patients, and therefore the Medical Board is subject to the same disclosure rules as medical providers; and
3. The release of personal information to Beneficiary is mandatory; the Medical Board's 'balancing' is erroneous and prejudicial against Beneficiary.

With regard to statements 1a and 1b, except for your reference to California Civil Code section 1798.24 subdivision (c), the code sections cited by you apply to medical providers, not regulatory agencies conducting confidential investigations. California Civil Code section 1798.24 subdivision (c), provides an exception to the prohibition against disclosing personal information about a person to someone other than the individual to whom it pertains as follows: "To the duly appointed guardian or conservator of the individual or a person representing the individual if it can be proven with reasonable certainty through the possession of agency forms, documents or correspondence that this person is the authorized representative of the individual to whom the information pertains."

Peter B. Murray was identified as the trustee, and was recognized as Audrey B. Murray's authorized representative by the Board. Peter Murray wrote to the Board on September 9, 2014, stating in pertinent part: "If you have any questions regarding this request you may contact my brother Bruce T Murray or myself."

Exhibit 24

In response to Peter Murray's authorization the Board has communicated with you about the complaint. Additionally, the Board has provided you with a copy of all correspondence exchanged between you and the Board. The Board further informed you that the authorization signed by Peter Murray was not sufficient to allow the Board to consider releasing Ms. Murray's medical records to you.

If you provide a proper written authorization from Peter Murray, the Board will consider releasing Ms. Murray's medical records to you. Alternatively, as the Board has previously advised, you are free, with the proper release, to obtain Ms. Murray's medical records directly from the facilities and medical providers who provided care and treatment to Ms. Murray as the creators and custodians of those records.

With regard to statement 2, the Board is a regulatory agency, and not a provider of health care. As previously stated, the information and documents you are requesting regarding the investigation of the complaint involving Ms. Murray fall under specific exemptions to the Public Records Act, including, but not limited to, Government Code section 6254 subdivision (f) and section 6255. These exemptions, among others, were intentionally written and codified by the legislature and governor to protect state agencies' records of investigation, as appropriate.

The Board has evaluated your request to disclose the identity of the medical consultants retained for the investigation and to release the information they produced regarding Ms. Murray's "medical condition, treatment, and death." As previously indicated, disclosure of information gathered during the course of the investigation would endanger the successful completion of investigations.

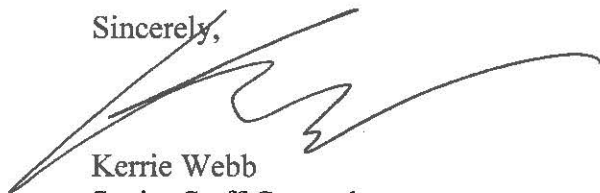
Disclosing the requested information would have a chilling effect on the Board's ability to complete investigations and protect the public. The public interest in non-disclosure clearly outweighs the public interest in disclosure here. Members of the public, health care institutions, medical consultants, and other possible complainants are less likely to provide the Board with information if their identities are public. "The prospect of public exposure discourages complaints and inhibits effective enforcement." (*City of San Jose v. Superior Court* (1999) 74 Cal.App. 4th 1008, 1020 (citations omitted).) Additionally, licensees are not likely to provide explanatory information if such information becomes public. Without these explanations, the Board is not able fully to assess the full scope of the care and treatment of patients, as well as the circumstances surrounding possible violations of the laws governing the practice of medicine. Patients, too, are less likely to share confidential medical information for purposes of investigation with the risk that the information will be publicly shared. Further, requiring disclosure of investigative materials would not result in a disclosure to only those members of the public or to individuals by whom the information is sought. The information would potentially become available to the public at large. (*Id.*, at p. 1018.)

Moreover, the deliberative process privilege exempts from disclosure materials that would expose an agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions. Even if the content of a document is purely factual, it is nonetheless exempt from public scrutiny if it is actually related to the process by which policies are formulated or, if it is inextricably intertwined with policymaking processes. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.) Records that reveal deliberative processes are protected through application of Government Code section 6255. Here, records concerning the decision-making relating to the course of an investigation are covered by the deliberative process privilege and, therefore, absent special circumstances, would be exempt from disclosure under Government Code section 6255.

With regard to statement 3, Civil Code section 1798.34 does not apply to your request, because you are seeking records pertaining to another individual, and you have not provided a sufficient authorization for the Board to consider. Additionally, you are seeking records of investigation, which the Board is authorized and obligated to protect from disclosure, as indicated above.

Please feel free to contact me if you wish to discuss this matter further.

Sincerely,



Kerrie Webb
Senior Staff Counsel

BRUCE T. MURRAY

1931 E Street ♦ San Diego, CA 92102 ♦ (619) 501-8556 ♦ murray@sagelaw.us

February 9, 2018

Kerrie Webb, Esq.
Staff Counsel
Medical Board of California
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815

Re: Exhaustion of administrative remedies, Audrey B. Murray, Control No. 800 2014
005263

Dear Ms. Webb:

I am in receipt of your Jan. 29, 2018 letter denying all of my requests for information regarding my mother's medical condition, treatment and death – and the related Medical Board investigation. Your bases for denial are without merit.

This is your third denial of my requests – beginning with my initial letter April 27, 2017; my second letter July 10, 2017; and finally my Jan. 29, 2018 letter. In each response, you wrongfully denied my requests.

I think it is fair to say that at this point, administrative remedies have been exhausted; and this matter is ripe for judicial review. Therefore, I will file a petition for writ of mandate in the Los Angeles Superior Court.

If you wish to avoid the writ process, you may release to me all of the information that I have requested by Feb. 26, 2018.

Sincerely,

A handwritten signature in black ink that reads "Bruce Murray". The signature is written in a cursive style with a large, looping "B" and a long, sweeping underline that extends to the right.